Buzzelle, Stanley

To:

Bowers, Terry L CIV-OSD OUSD ATL (US)

Cc:

Sarcine la, Andrew I CIV OSD OUSD ATL (US): Seibert, John F CIV OSD QUSD ATL (US): Ruhl, Suzi

Subject:

[Non-DoD Source] Re: NEPA & Environmental Justice Guide

Date:

Friday, February 5, 2016 12:07:47 PM

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Terry,

Ex. 5 Deliberative Process (DOD)

Thanks, Stan

Stan Buzzelle Attorney-Advisor U.S. Environmental Protection Agency Office of Environmental Justice (202) 564-2316

The preceding message (including any attachments) contains information that may be confidential, be protected by attorney work-product, attorney-client or other applicable privileges and may be exempt from disclosure under applicable law. It is intended to be conveyed only to the named recipient(s). If you received this message in error or if you are not the intended recipient, please notify the sender and delete the message from your system. Any use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Buzzelle, Stanley

Sent: Friday, February 5, 2016 11:31 AM

To: Bowers, Terry L CIV OSD OUSD ATL (US)

Cc: Sarcinella, Andrew J CIV OSD OUSD ATL (US); Seibert, John F CIV OSD OUSD ATL (US); Ruhl, Suzi

Subject: Re: NEPA & Environmental Justice Guide

Terry.

Ex. 5 Deliberative Process (DOD)

Regards,

Stan

Stan Buzzelle Attorney-Advisor U.S. Environmental Protection Agency Office of Environmental Justice (202) 564-2316

The preceding message (including any attachments) contains information that may be confidential, be protected by attorney work-product, attorney-client or other applicable privileges and may be exempt from disclosure under applicable law. It is intended to be conveyed only to the named recipient(s). If you received this message in error or if you are not the intended recipient, please notify the sender and delete the message from your system. Any use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Bowers, Terry L CIV OSD OUSD ATL (US) <terry.l.bowers14.civ@mail.mil>

Sent: Friday, February 5, 2016 9:37 AM

To: Buzzelle, Stanley

Cc: Sarcinella, Andrew J CIV OSD OUSD ATL (US): Seibert, John F CIV OSD OUSD ATL (US)

Subject: NEPA & Environmental Justice Guide

Mr. Buzzelle,

Ex. 5 Deliberative Process (DOD)

Very respectfully,

Terry Bowers

Terry Bowers

Office of the Deputy Assistant Secretary of Defense (Environment, Safety and Occupational Health) 4800 Mark Center Drive (Box #56)
Suite 16G14
Alexandria, VA 22350-3605
terry.l.bowers14.civ@mail.mil
(703) 693-9447

----Original Message-----

From: Sarcinella, Andrew J ClV OSD OUSD ATL (US)

Sent: Friday, February 05, 2016 9:04 AM

To: Bowers, Tetry L CIV OSD OUSD ATL (US); VanNess, James G (Jim) SES OSD OGC (US)

Cc: Sullivan, Maureen SES OSD OUSD ATL (US)

Subject: NEPA & Environmental Justice

Good Morning Gentlemen;

DASD Sulfivan asked me to forward this to you both. It is a product me received at the EJ meeting yesterday.

Have a wonderful day

Joe

Joe Sarcinella, Esq.
Senior Advisor & Liaison for Native American Affairs
U.S. Department of Defense
Office of the Secretary of Defense
OASD(El&E)/ESOH
Email: andrew.j.sarcinella.civ@mail.mil
(571) 372-6890
Caution-http://www.denix.osd.mil/na/

"If you see a misspelling or poor grammer above, blame autocorrect"

Martin, Karent,

To:

Minter, Marsha; Adam Neufeld; Ali, Mustafa; Andrea Falken; Arthur Butch Blazer; bruce gelber@usdoj.gov; Catherine Barrett: Chris Cummiskey (shris cummiskey@ho. dhs.gov); Christopher Upperman; David Klaus; Denise Turner Roth; Dr. Wanda Jones; Edward Bradley; Harriet Tregoning; Kristen Sarri (Kristen sarri@ios.doj.gov); Lowry Crook; Sullivan, Maureen SES CSD OUSD ATL (US); Sam Hirsch; Shoshana Lew; Srephanie Swirsky; Vanita

Guota (vanita gupta@usdoj.gov)

Cc:

Ali Mustafa: Tejada, Marthew: Ruhi, Suzi

Subject:

[Non-DoD Source] RE: Friendly reminder; EJ IWG Framework Concurrence and Agency EJ Assets-- DUE Jan. 15,

2016

Date:

Friday, January 15, 2016 12:49:51 PM

Attachments:

QECA-16-000-3213.pdf

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Good afternoon EJ IWG Family,

As promised, I have enclosed the signed copies of the invitation letters for the February 4th meeting. The original letters will be sent though regular mail.

Thank You

Karen L. Martin
Special Assistant to the Senior Advisor for Environmental Justice
Office of the Administrator
U.S. Environmental Protection Agency
martin.karenl@epa.gov < Caution-mailto:martin.karenl@epa.gov >
Room 2226 G WJCS
202-564-0203

From: Minter, Marsha

Sent: Thursday, January 14, 2016 5:17 PM

To: Adam Neufeld <adam.neufeld@gsa.gov>; Ali, Mustafa <Ali.Mustafa@epa.gov>; Andrea Falken <Andrea.Falken@ed.gov>; Arthur"Butch" Blazer <arthur.blazer@osec.usda.gov>; bruce.gelber@usdoj.gov; Catherine Barrett <CBarrett2@doc.gov>; Chris Cummiskey (chris.cummiskey@hq.dhs.gov>; Christopher Upperman <Christopher.Upperman@sba.gov>; David Klaus <David.Klaus@hq.doe.gov>; Denise Turner Roth <denise.roth@gsa.gov>; Dr. Wanda Jones <wanda.jones@hhs.gov>; Edward Bradley <edward.bradley@va.gov>; Harriet Tregoning <Harriet.Tregoning@hud.gov>; Kristen Sarri (Kristen_sarri@ios.doi.gov>; Lowry Crook (b) (6) Maureen Sullivan <maureen.sullivan18.civ@mail.mil>; Sam Hirsch <sam.hirsch@usdoj.gov>; Shoshana Lew <shoshana.lew@dot.gov>; Stephanie Swirsky <Swirsky.Stephanie@dol.gov>; Vanita Gupta (vanita.gupta@usdoj.gov> <vanita.gupta@usdoj.gov>

Cc: Ali, Mustafa <Ali, Mustafa@epa.gov>; Tejada, Matthew <Tejada.Matthew@epa.gov>; Martin,

KarenL < Martin. KarenL@epa.gov>; Ruhl, Suzi < Ruhl. Suzi @epa.gov>
Subject: Friendly reminder: EJ IWG Framework Concurrence and Agency EJ Assets-- DUE Jan. 15, 2016

Happy New Year II

Friendly reminder—thanks to the agencies that have replied.

The ASKs

- 1) By January 15, 2016, each EJ IWG Senior Representative or designee will electronically submit agency concurrence, or "SHOW STOPPER" non-concurrence on the FY 2016-2018 Framework for Collaboration to the EJ IWG Program Manager, Marsha Minter, minter.marsha@epa.gov < Caution-mailto:minter.marsha@epa.gov > . Please contact Cynthia Ferguson, (Cynthia.Ferguson@usdoj.gov < Caution-mailto:Cynthia.Ferguson@usdoj.gov >) if you would like a redline comparing the current version of the document to the version that was posted for public comment. The Framework will be released in mid-February 2016.
- 2) By January 15, 2016, complete and return the attached AGENCY EJ Assets Spreadsheet. The information will be compiled and used as background materials for the upcoming EJ IWG Senior Leadership meetings in 2016.

Feb. 4, 2016 Meeting Update

The invitation letters are signed and Karen will send copies out tomorrow.

Thanks for your continued support. Marsha

From: Minter, Marsha

Sent: Wednesday, December 23, 2015 3:34 PM

To: Adam Neufeld <adam.neufeld@gsa.gov < Caution-

mailto:adam.neufeld@gsa.gov > >;ali.mustafa@epa.gov < Caution-mailto:ali.mustafa@epa.gov > ;
Andrea Falken <Andrea.Falken@ed.gov < Caution-mailto:Andrea.Falken@ed.gov > >; Arthur"Butch"
Blazer <arthur.blazer@osec.usda.gov < Caution-mailto:arthur.blazer@osec.usda.gov > >; Bruce
Gelber

Gelber

Gelber @usdoj.gov < Caution-mailto:bruce.gelber@usdoj.gov > >; Catherine Barrett
<CBarrett2@doc.gov < Caution-mailto:CBarrett2@doc.gov > >; Chris Cummiskey
(chris.cummiskey@hq.dhs.gov < Caution-mailto:chris.cummiskey@hq.dhs.gov >)
<chris.cummiskey@hq.dhs.gov < Caution-mailto:chris.cummiskey@hq.dhs.gov > >; Christopher
Upperman <Christopher.Upperman@sba.gov < Caution-mailto:Christopher.Upperman@sba.gov > >;
David Klaus <David.Klaus@hq.doe.gov < Caution-mailto:David.Klaus@hq.doe.gov > >; Denise Turner
Roth <denise.roth@gsa.gov < Caution-mailto:denise.roth@gsa.gov > >; Dr. Wanda Jones
<wanda.jones@hhs.gov < Caution-mailto:wanda.jones@hhs.gov >>; Edward Bradiey

```
<edward.bradley@va.gov < Caution-mailto:edward.bradley@va.gov > >; Harriet Tregoning
<Harriet.Tregoning@hud.gov < Caution-mailto:Harriet.Tregoning@hud.gov > >; Kristen Sarri
(Kristen_sarri@ios.doi.gov < Caution-mailto:Kristen_sarri@ios.doi.gov > )
<Kristen sarri@ios.doi.gov < Caution-mailto:Kristen sarri@ios.doi.gov > >: Lowry Crook
<lcrook@ceq.eop.gov < Caution-mailto:lcrook@ceq.eop.gov > >; Maureen Sullivan
<maureen.sullivan18.civ@mail.mil < Caution-mailto:maureen.sullivan18.civ@mail.mil > >; Sam
Hirsch <sam.hirsch@usdoj.gov < Caution-mailto:sam.hirsch@usdoj.gov >>; Shoshana Lew
<shoshana.lew@dot.gov < Caution-mailto:shoshana.lew@dot.gov > >; Stephanie Swirsky
<Swirsky.Stephanle@dol.gov < Caution-mailto:Swirsky.Stephanle@dol.gov > >; Vanita Gupta
(vanita.gupta@usdoj.gov < Caution-mailto;vanita.gupta@usdoj.gov > )
<vanita.gupta@usdoj.gov < Caution-mailto:vanita.gupta@usdoj.gov > >
Cc: Ali, Mustafa <Ali, Mustafa@epa.gov < Caution-mailto:Ali, Mustafa@epa.gov > >; Tejada, Matthew
<Tejada.Matthew@epa.gov < Caution-mailto:Tejada.Mattnew@epa.gov > >; Amber Blaha
<amber.blaha@usdoj.gov < Caution-mailto:amber.blaha@usdoj.gov >>; Amie Brown
<Amie.Brown@osec.usda.gov < Caution-mailto:Amie.Brown@osec.usda.gov > >; Andrew Sarcinella
<Andrew.i.sarcinella.civ@mail.mil < Caution-mailto:Andrew.j.sarcinella.civ@mail.mil > >: Babette
Williams (williams.babette@dol.gov < Caution-mailto:williams.babette@dol.gov > )
<williams.babette@dol.gov < Caution-mailto:williams.babette@dol.gov > >; Caitlin Gregg
<Caitlin.Gregg@ogc.usda.gov < Caution-mailto:Caitlin.Gregg@ogc.usda.gov > >; Catherine. Johnson7
(Catherine.Johnson7@va.gov < Caution-mailto:Catherine.Johnson7@va.gov > )
<Catherine.Johnson7@va.gov < Caution-mailto:Catherine.Johnson7@va.gov > >; Chanya Liv
<chanya.liv@hhs.gov < Caution-mailto:chanya.liv@hhs.gov >>; Daria Neal
<daria.neal@usdoj.gov < Caution-mailto:daria.neal@usdoj.gov > >; Dr. Teresa Pohlman
<teresa.pohlman@dhs.gov < Caution-mailto:teresa.pohlman@dhs.gov > >; Forrest Christian
(Forrest.Christian2@usdoj.gov < Caution-mailto:Forrest.Christian2@usdoj.gov > )
<Forrest Christian2@usdoi.gov < Caution-mailto;Forrest.Christian2@usdoj.gov > >; Gaugush, Samuel
F (sfgaugush@osec.usda.gov < Caution-mailto:sfgaugush@osec.usda.gov > )
<sfgaugush@osec.usda.gov < Cautlon-mailto:sfgaugush@osec.usda.gov > >; Jeff Roberson
<iroberson@doc.gov < Caution-mailto:iroberson@doc.gov > >; John Conger
<john.conger@osd.mil < Caution-mailto:john.conger@osd.mil > >; Kelly, Cheryl
(cheryl_kelly@ios.doi.gov < Caution-mailto:cheryl_kelly@ios.doi.gov > )
<cheryl kelly@los.doi.gov < Caution-mailto:cheryl kelly@los.doi.gov > >; Kyle Flood
<Kyle.Flood@ed.gov < Caution-mailto:Kyle.Flood@ed.gov > >; Linda Belton
da.belton@noaa.gov < Caution-mailto:linda.belton@noaa.gov > >: Lisa Quiveors
<Lisa.quiveors@hq.dhs.gov< Caution-mailto:Lisa.quiveors@hq.dhs.gov>>; Lisa Stuart
<stuart.lisa@dol.gov < Caution-mailto:stuart.lisa@dol.gov > >; Madeline Caliendo
<madeline.caliendo@gsa.gov < Caution-mailto:madeline.caliendo@gsa.gov > >; Marsha Minter
<Minter.Marsha@epa.gov < Caution-mailto:Minter.Marsha@epa.gov > >; Megan Mack
<megan.mack@hq.dhs.gov < Caution-mailto:megan.mack@hq.dhs.gov > >; Melinda Downing
<melinda.downing@hq.doe.gov < Caution-mailto:melinda.downing@hq.doe.gov > >; Michael
Martinez <mike.martinez@wdc.usda.gov < Caution-mailto:mike.martinez@wdc.usda.gov > >; Rachel
lsacoff < (b) (6)
                           < Caution-mailto (b) (6)
Rebecca Higgins <rebecca.higgins@dot.gov < Caution-mailto:rebecca.higgins@dot.gov > >; Ron
Milam < ron, milam@hhs.gov < Caution-mailto:ron.milam@hhs.gov > >; Sandra Howard
<sandra.howard@hhs.gov < Caution-mailto:sandra.howard@hhs.gov > >; Sunaree Marshail
```

| Greetings, | | |
|--|------------------------|--|
| F-12 110 MTF | ca in alternation from | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| Current Status | | |
| Control of the Control of Control | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| The ASKs | | |
| | .t1letesse?stelQiQ | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

Save the Dates

<Sunaree.K.Marshall@hud.gov < Caution-mailto:Sunaree.K.Marshall@hud.gov > >; Willie Taylor

- January 28, 2016, US EPA, 2:00-3:30pm: EJ IWG Monthly Meeting and Celebration of Retirements, Accomplishments and New Beginnings
- Feb. 4, 2016, US EPA, 1:00-3:90pm: Deputies and Chiefs of Staff Collaborative Conversation.
 on EJ

Reminder

• By Feb. 11, 2016, post Annual Accomplishment Reports on Agency Websites

Thank you for your continued support and Happy Holidays!!! Marsha

Marsha Minter Associate Director, Office of Environmental Justice US EPA (202)566-0215

Minter, Marsha

To:

Adam Neufeld: All, Mustafa; Andrea Ealken; Arthur Busch' Blazer; bruce gelber@usdol.gov; Catharine flarrett; Chris Cummiskey (chris.cummiskey@hq.dhs.gov); Christopher Unperman; David Klaus; Denise Turger Roth; Or. Wanda Jones; Edward Bradley; Harriet Tregoning; Kristen Sarri (Kristen sarri@ios.dbi.gov); Lowry Crook; Suflivan, Maureen SES OSD QUSD ATL (US); Sam Hitsch; Shoshana Lew; Stephanie Swirsky; Vanita Gupta

(vanita.gupta@usdcj.gov)

Cc:

All, Mustafa: Tejada, Matthew: Martin, Karent: Ruhl, Suzi

Subject:

[Non-DoD Source] Friendly reminder: EJ IWG Framework Concurrence and Agency EJ Assets -- DUE Jan. 15,

2016

Date:

Thursday, January 14, 2016 5:17:08 PM

Attachments:

ELING Framework for Collaboration FY2015-2018 concur version 12-23-15 docs

EL IWG Agency EL Assets Spreadsheet xisx

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Happy New Year !!

Friendly reminder—thanks to the agencies that have replied.

The ASKs

Ex. 5 Deliberative Process (DOD)

Feb. 4, 2016 Meeting Update

The invitation letters are signed and Karen will send copies out tomorrow.

Thanks for your continued support.

Marsha

From: Minter, Marsha

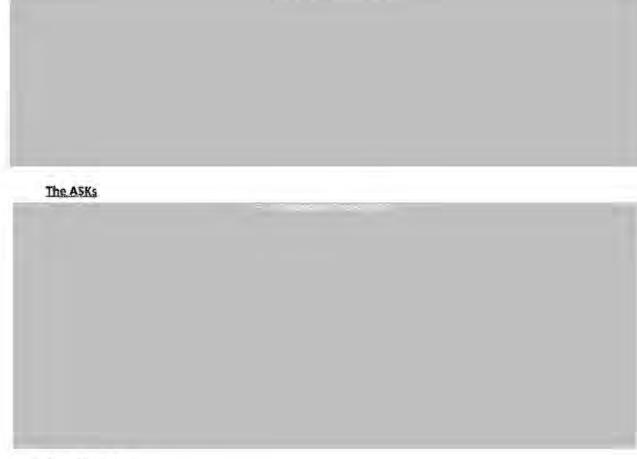
Sent: Wednesday, December 23, 2015 3:34 PM

To: Adam Neufeld <adam.neufeld@gsa.gov>; ali.mustafa@epa.gov; Andrea Falken <Andrea.Falken@ed.gov>, Arthur"Butch" Blazer <arthur.blazer@osec.usda.gov>, Bruce Gelber <bruce.gelber@usdoj.gov>; Catherine Barrett <CBarrett2@doc.gov>; Chris Cummiskey (chris.cummiskey@hq.dhs.gov) <chris.cummiskey@hq.dhs.gov>; Christopher Upperman <Christopher.Upperman@sba.gov>; David Klaus <David.Klaus@hq.doe.gov>; Denise Turner Roth <denise.roth@gsa.gov>; Dr. Wanda Jones <wanda.jones@hhs.gov>; Edward Bradley <edward.bradley@va.gov>; Harriet Tregoning <Harriet Tregoning@hud.gov>; Kristen Sarri (Kristen_sarri@ios.doi.gov) <Kristen_sarri@ios.doi.gov>; Lowry Crook < Maureen Sullivan <maureen.sullivan18.civ@mail.mil>; Sam Hirsch <sam.hirsch@usdoj.gov>; Shoshana Lew <shoshana.lew@dot.gov>; Stephanie Swirsky <Swirsky.Stephanie@dol.gov>; Vanita Gupta (vanita.gupta@usdoj.gov) <vanita.gupta@usdoj.gov> Cc: Ali, Mustafa <Ali, Mustafa@epa.gov>; Tejada, Matthew <Tejada, Matthew@epa.gov>; Amber Blaha <amber.blaha@usdoj.gov>; Amie Brown <Amie.Brown@osec.usda.gov>; Andrew Sarcinella <Andrew.j.sarcinella.clv@mail.mil>; Babette Williams (williams.babette@dol.gov) <williams.babette@dol.gov>; Caitlin Gregg <Caitlin.Gregg@ogc.usda.gov>; Catherine. Johnson7 (Catherine Johnson 7@va.gov) < Catherine Johnson 7@va.gov>; Chanya Liv < chanya Liv @hns.gov>; Daria Neal <daria neal@usdoi.gov>; Dr. Teresa Pohlman <teresa pohlman@dhs.gov>; Forrest Christian (Forrest Christian 2@usdoj.gov) < Forrest Christian 2@usdoj.gov>; Gaugush, Samuel F Conger < john.conger@osd.mi/>; Kelly, Cheryl (cheryl_kelly@ios.doi.gov) < cheryl_kelly@ios.doi.gov>; Kyle Flood <Kyle.Flood@ed.gov>; Linda Belton Inda, belton@noaa.gov>; Lisa Quiveors <Lisa.quiveors@hq.dhs.gov>: Lisa Stuart <stuart.iisa@doi.gov>; Madeline Caliendo <madeline.caliendo@gsa.gov>; Marsha Minter <Minter, Marsha@epa.gov>; Megan Mack <megan.mack@hq.dhs.gov>; Meiinda Downing <melinda.downing@hq.doe.gov>; Michael Martinez <mike.martinez@wdc.usda gov>; Rachel Isacoff < ; Rebecca Higgins <rebecca.higgins@dot.gov>: Ron Milarn <ron.mllam@hhs.gov>; Sandra Howard <sandra.howard@hhs.gov>; Sunaree Marshall <Sunaree.K,Marshall@hud.gov>; Willie Taylor <willie_taylor@ios.doi.gov>

Subject: EJ IWG Framework Concurrence and Agency EJ Assets-- DUE Jan: 15, 2016

Greetings,

Current Status



Save the Dates

- January 28, 2016, US EPA, 2:00-3:30pm: EJ IWG Monthly Meeting and Celebration of Retirements, Accomplishments and New Beginnings
- Feb. 4, 2016, US EPA, 1:00-3:00pm: Deputies and Chiefs of Staff Collaborative Conversation on El

Reminder

By Feb. 11, 2016, post Annual Accomplishment Reports on Agency Websites

Thank you for your continued support and Happy Holidays!!! Marsha

Marsha Minter Associate Director, Office of Environmental Justice US EPA (202)556-0215

From: Bowers, Tarry L CIV DSD OUSD ATL (US) To: Sullivan, Maureen SES OSO OUSD ATL (US) Cc: Sarcinella, Andrew J CIV OSD 0USD ATL (US): Vaniless, James G (Ilim) SES OSD OGC (US): Sethers, John F CIV OSD OUSD ATL (US) Subject: NEPA & Environmental Justice - clarification on classification Date: Friday, February 5, 2016 2:46:53 PM Attachments: Non-DoD Source Re NEPA Environmental Justice Guide (5.54 KB) most Maureen, V/r. Terry - Original Message-Frem: Buzzelle, Stanley [mailto:Buzzelle, Stanley@cpa.gov] Sent Friday, February 05, 2016 11:32 AM To. Bowers, Terry L CIV OSD OUSD ATL (US) Cc. Sarcinella, Andrew J CIV OSD OUSD ATL (US); Scibert, John F CIV OSD OUSD ATL (US); Ruhl, Suzi Subject: [Non-DoD Source] Re: NEPA & Environmental Justice Guide

Terry,

Regards. Stan

Stan Buzzelle
Attorney-Advisor
U.S. Environmental Protection Agency
Office of Environmental Justice
(202) 564-2316

The preceding message (including any attachments) contains information that may be confidential, be protected by attorney work-product, attorney-client or other applicable privileges and may be exempt from disclosure under applicable law. It is intended to be conveyed only to the named recipient(s). If you received this message in error or if you are not the intended recipient, please notify the sender and delete the message from your system. Any use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

----Original Message---From: Sullivan, Maureen SES OSD OUSD ATL (US)
Sent: Friday, February 05, 2016 9:51 AM
To: Sarcinella, Andrew J CIV OSD OUSD ATL (US); Bowers, Terry L CIV OSD OUSD ATL (US); VanNess, James G (Jim) SES OSD OGC (US)
Subject: RE: NEPA & Environmental Justice

Terry and Jim

Maureen Sullivan DASD (ESOH) (703) 695-7957 Blackberry Cell (703) 509-2089 maureen.sullivan18.civ@mail.mil

NEWNEW**
Rosalie Gingerich
Executive Assistant
703-571-0071
rosalie.a.gingerich.ctr@mail.nul

----Original Message---From: Sarcinella, Andrew J CIV OSD OUSD ATL (US)
Sent: Friday, February 05, 2016 9:04 AM
To: Bowers, Terry L CIV OSD OUSD ATL (US); VanNess, James G (Jim) SES OSD OGC (US)
Cc: Sullivan, Maureen SES OSD OUSD ATL (US)
Subject: NEPA & Environmental Justice

Good Morning Gentlemen;

DASD Sullivan asked me to forward this to you both. It is a product me received at the EJ meeting yesterday.

Have a wonderful day

Joe

Joe Sarcinella, Esq. Senior Advisor & Liaison for Native American Affairs U.S. Department of Defense Office of the Secretary of Defense OASD(EI&E)/ESOH Email: andrew.j.sarcinella.civ@mail.mil (571) 372-6890 http://www.denix.csd.mil/na/

"If you see a misspelling or poor grammer above, blame autocorrect"

Sarcinella, Andrew I CTV OSC OUSD ATL 1951

To:

Sulivan, Maureen SES OSD OUSD ATL (US)

Subject:

Re: (Non-BoD Source) Friendly reminder: 6J JWG Framework Concurrence and Agency EJ Assers- DUE Jan. 15.

2016

Date:

Thursday, January 14, 2016 5:31:00 PM

Have a lovely evening

Thank you for your time.

Joe

A. Joseph Sarcinella V, Esq.
Senior Advisor & Liaison for Native American Affairs
United States Department of Defense
Office of the Secretary of Defense
Andrew.j.sarcinella.civ@mail.mil

---- Original Message -----

From: Suffivan, Maureen SES OSD OUSD ATL (US)

Sem: Thursday, January 14, 2016 05:24 PM

To: Sarcinella, Andrew J CIV OSD OUSD ATL (US)

Subject: FW: [Non-DoD Source] Friendly reminder: EJ DVG Framework Concurrence and Agency FJ Assets-DUE Jan. 15, 2016

Fig. 6.5 compliance from the 1000

Maureen Sullivan DASD (ESOH) (703) 695-7957 Blackberry Cell (703) 509-2089 maureen sullivan18 civ@mail.mil

NEWNEW**
Rosalie Gingerich
Executive Assistant
703-571-0071
rosalie.a.gingerich.ctr@mail.mil

----Original Message----

From: Minter, Marsha [mailto:Minter, Marsha@equ.gov]

Sent: Thursday, January 14, 2016 5:17 PM

To: Adam Neufeld; Ali, Mustafa; Andrea Falken: Arthur Butch Blazer; bruce.gelber@usdoj.gov; Catherine Barrett; Chris Cummiskey (chris.cummiskey@hq.dhs.gov); Christopher Upperman, David Klaus; Denise Turner Roth; Dr. Wanda Jones; Edward Bradley: Harriet Tregoning; Kristen Sarri (Kristen_sarri@ios.doi.gov); Lowry Crook; Sullivan, Maureen SES OSD OUSD ATL (US); Sam Hirsch: Shoshana Lew; Stephanie Swirsky; Vanita

| Gupta (vanita.gupta@usdoj.gov) Cc: Ali, Mustafa; Tejada, Matthew; Martin, KarenL; Ruhl, Suzi Subject: [Non-DoD Source] Friendly reminder: El IWG Framework Concurrence and Agency El Assets DUE Jan, 15, 2016 |
|---|
| All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser. |
| Happy New Year !! |
| Friendly reminder-thanks to the agencies that have replied. The ASKs |
| |
| |
| |
| Feb. 4, 2016 Meeting Update |
| The invitation letters are signed and Karen will send copies out fornorrow, |
| Thanks for your continued support. |
| Marsha |
| |
| From: Minter, Marsha |

| Arthur Butch Blazer <arthur.b <cbarrett2@doc.gov>; Chris C Cluistopher Upperman <christo Turner Roth <denise.roth@gsa. <edward.bradley@va.gov>; Ha</edward.bradley@va.gov></denise.roth@gsa. </christo </cbarrett2@doc.gov></arthur.b | 2015 3:34 PM Id@gsa.gov>; ali.mustafa@epa.gazer@osec.usda.gov>; Bruce Ge ummiskey (chris.cummiskey@ho pher,Upperman@sba.gov>; Dav ov>; Dr. Wanda Jones <wanda.j <harriet.tregonin="" isten_sarri@ios.doi.gov="" riet="" tregoning="">; Lown</wanda.j> | tber bruce.gelber@usdoj.gov p.dhs.gov) <chris.cummiskey@ id Klaus <david.klaus@hq.do ones@bhs.gov>; Edward Brau ng@hud.gov>; Kristen Sarri</david.klaus@hq.do </chris.cummiskey@ | v>: Catherine Barrett @hq.dhs.gov>; oe.gov>: Denise |
|--|--|---|---|
| *** | nil>; Sam Hirsch <sam.hirsch@< th=""><td></td><td>Maureen Sunvan</td></sam.hirsch@<> | | Maureen Sunvan |
| | nanie Swirsky <swirsky.stephan< th=""><td>ie@dol.gov>; Vanita Gupta</td><td></td></swirsky.stephan<> | ie@dol.gov>; Vanita Gupta | |
| | epa.gov>; Tejada, Matthew <te< th=""><td></td><td>nber Blaha</td></te<> | | nber Blaha |
| | ie Brown <amie,brown@usec.u nil>; Babette Williams (williams</amie,brown@usec.u | | habatte @ylol agus |
| Caitlin Gregg < Caitlin Gregg@ | ge usda.gov>: Catherine. Johnso | on7 (Catherine Johnson7@va. | gov) |
| | Chanya Liv <chanya.liv@hhs.gr 1@dhs.gov>; Forrest Christian ()</chanya.liv@hhs.gr | | |
| Forrest.Christian2@usdoj.gov | : Gaugush, Samuel F (sfgaugus) | e@osec.usda.gov) <sfgaugush< td=""><td></td></sfgaugush<> | |
| | gov>; Iohn Conger <john.conger cryl_kelly@ios.doi.gov>; Kyle P</john.conger | | Linda Belton |
| dinda.belton@noaa.gov>; Lisa | Quiveors <lisa.quiveors@hq.dh< th=""><td>s gov>: Lisa Stuart <stuart.lisa< td=""><td>a@dol.gov>;</td></stuart.lisa<></td></lisa.quiveors@hq.dh<> | s gov>: Lisa Stuart <stuart.lisa< td=""><td>a@dol.gov>;</td></stuart.lisa<> | a@dol.gov>; |
| | aliendo@gsa.gov>; Marsha Mint elinda Downing <melinda down<="" th=""><td></td><td></td></melinda> | | |
| cmike,martinez@wile.usda.gov | Rachel Isacoff < | Rehecca | Higgins |
| krenecca.mggms@dot.gov>; k Sunaree Marshall <sunaree.k.l< td=""><th>n Milam <ron.milam@hhs.gov></ron.milam@hhs.gov></th><td></td><td></td></sunaree.k.l<> | n Milam <ron.milam@hhs.gov></ron.milam@hhs.gov> | | |
| | aman endugevs. while rays | the same as a second with the second second second second | , |
| Subject: EJ IWG Framework C | ncorrence and Agency EJ Asset | | |
| Subject: EJ IWG Framework C | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| Greetings. | | | |
| Subject: EJ 1WG Framework C Greetings. Current Status | | | |
| Greetings. | | | |
| Greetings. | | | |
| Greetings. | | | |

| The AS | iks |
|----------------|---|
| | |
| Save ti | ne Dates |
| Ja Accom | unuary 28, 2016, US EPA, 2:00-3:30pm: EI IWG Monthly Meeting and Celebration of Retirements, uplishments and New Beginnings |
| F | eb. 4. 2016, US EPA, 1:00-3:00pm: Deputies and Chiefs of Staff Collaborative Conversation on EJ |
| Remin | der |
| В | y Feb. 11, 2016, post Annual Accomplishment Reports on Agency Websites |
| Thank Marsh | you for your continued support and Happy Holidays!!! |
| | a Minter |

Associate Director, Office of Environmental Justice

US EPA

(202)566-0215

Buzzelle, Stanley

To:

Rowers, Terry I CIV OSD OUSD ATL (US)

CC:

Sarcinella, Andrew 1 CIV OSD DUSD ATL (US): Seibert, John F CIV OSD DUSD ATL (US): Ruftl, Sur

Subject:

[Non-DoD Source] Re: NEPA & Environmental Justice Guide

Date:

Friday, February 5, 2016 12:07:47 PM

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Terry,

Thanks.

Stan Buzzelle
Attorney-Advisor
U.S. Environmental Protection Agency
Office of Environmental Justice
(202) 564-2316

The preceding message (including any attachments) contains information that may be confidential, be protected by attorney work-product, attorney-client or other applicable privileges and may be exempt from disclosure under applicable law. It is intended to be conveyed only to the named recipient(s). If you received this message in error or if you are not the intended recipient, please notify the sender and delete the message from your system. Any use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Buzzelle, Stanley

Sent: Friday, February 5, 2016 11:31 AM

To: Bowers, Terry L CIV OSD OUSD ATL (US)

Cc: Sarcinella, Andrew J CIV OSD OUSD ATL (US); Seihert, John F CIV OSD OUSD ATL (US); Ruhl, Suzi

Subject: Re: NEPA & Environmental Justice Guide

Terry,

Regards.

Stan

Stan Buzzelle
Attorney-Advisor
U.S. Environmental Protection Agency
Office of Environmental Justice
(202) 564-2316

The preceding message (including any attachments) contains information that may be confidential, be protected by attorney work-product, attorney-client or other applicable privileges and may be exempt from disclosure under applicable law. It is intended to be conveyed only to the named recipient(s). If you received this message in error or if you are not the intended recipient, please notify the sender and delete the message from your system. Any use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Bowers, Terry L CIV OSD OUSD ATL (US) <terry.l.bowers14.civ@mail.mil>

Sent: Friday, February 5, 2016 9:37 AM

To: Buzzelle, Stanley

Cc: Sarcinella, Andrew J CIV OSD OUSD ATL (US): Seibert, John F CIV OSD OUSD ATL (US)

Subject: NEPA & Environmental Justice Guide

Mr. Buzzelle.

Ex. 5 Deliberative Process (DOD)

Very respectfully.

Terry Bowers

Terry Bowers
Office of the Deputy Assistant Secretary of Defense (Environment, Safety and Occupational Health)
4800 Mark Center Drive (Box #56)
Suite 16G14
Alexandria, VA 22350-3605
terry.i.bowers14.civ@mail.mil
(703) 693-9447

----Original Message-----

From: Sarcinella, Andrew J CIV OSD OUSD ATL (US)

Sent: Friday, February 05, 2016 9:04 AM

To: Bowers, Terry L CIV OSD OUSD ATL (US); VanNess, James G (Jim) SES OSD OGC (US)

Cc: Sullivan, Maureen SES OSD OUSD ATL (US)

Subject: NEPA & Environmental Justice

Good Morning Gentlemen;

DASD Sulfivan asked me to forward this to you both. It is a product me received at the EJ meeting yesterday.

Have a wonderful day

Joe

Joe Sarcinella, Esq.
Senior Advisor & Liaison for Native American Affairs U.S. Department of Defense
Office of the Secretary of Defense
OASD(El&E)/ESOH
Email: andrew.j.sarcinella.civ@mail.mil
(571) 372-6890
Caution-http://www.denix.osd.mil/pa/

"If you see a misspelling or poor grammer above, blame autocorrect"

Buzzelle, Stanley

To:

Bowers, Tarry L Cly OSD OUSD ATL (US)

Cc:

Sarcinella, Andrew I CIV OSD OUSD ATL (US): Seibert, John F CIV OSD OUSD ATL (US): Ruhl, Suzi

Subject:

[Non-DoD Source] Ret NEPA & Environmental Justice Guide

Date:

Friday, February 5, 2016 12:07:43 PM

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Terry.

Ex. 5 Deliberative Process (DOD)

Thanks, Stan

Stan Buzzelle Attorney-Advisor U.S. Environmental Protection Agency Office of Environmental Justice (202) 564-2316

The preceding message (including any attachments) contains information that may be confidential, be protected by attorney work-product, attorney-client or other applicable privileges and may be exempt from disclosure under applicable law. It is intended to be conveyed only to the named recipient(s). If you received this message in error or if you are not the intended recipient, please notify the sender and delete the message from your system. Any use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Buzzelle, Stanley

Sent: Friday, February 5, 2016 11:31 AM

To: Bowers, Terry L CIV OSD OUSD ATL (US)

Cc: Sarcinella, Andrew J CIV OSD OUSD ATL (US); Seibert, John F CIV OSD OUSD ATL (US); Ruhl, Suzi

Subject: Re: NEPA & Environmental Justice Guide

Terry,

Ex. 5 Deliberative Process (DOD

Regards.

Stan

Stan Buzzeile Attorney-Advisor U.S. Environmental Protection Agency Office of Environmental Justice (202) 564-2316

The preceding message (including any attachments) contains information that may be confidential, be protected by attorney work-product, attorney-client or other applicable privileges and may be exempt from disclosure under applicable law. It is intended to be conveyed only to the named recipient(s). If you received this message in error or if you are not the intended recipient, please notify the sender and delete the message from your system. Any use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Bowers, Terry L CIV OSD OUSD ATL (US) <terry.l.bowers14.civ@mail.mil>

Sent: Friday, February 5, 2016 9:37 AM

To: Buzzelle, Stanley

Cc: Sarcinella, Andrew J CIV OSD OUSD ATL (US): Seibert, John F CIV OSD OUSD ATL (US)

Subject: NEPA & Environmental Justice Guide

Mr. Buzzelle.

Very respectfully,

Tetry Bowers

Terry Bowers
Office of the Deputy Assistant Secretary of Defense (Environment, Safety and Occupational Health)
4800 Mark Center Drive (Box #56)
Suite 16G14
Alexandria. VA 22350-3605
terry.l.bowers14.civ@mail.mil
(703) 693-9447

---Original Message----

From: Sarcinella, Andrew J CIV OSD OUSD ATL (US)

Sent: Friday, February 05, 2016 9:04 AM

To: Bowers, Terry L CIV OSD OUSD ATL (US): VanNess, James G (Jim) SES OSD OGC (US)

Cc: Sullivan, Maureon SES OSD OUSD ATL (US)

Subject: NEPA & Environmental Justice

Good Morning Gentlemen;

DASD Sullivan asked me to forward this to you both. It is a product me received at the EJ meeting yesterday.

Have a wonderful day

Joe

Joe Sarcinella, Esq.
Senior Advisor & Liaison for Native American Affairs
U.S. Department of Defense
Office of the Secretary of Defense
OASD(El&E)/ESOH
Email: andrew.j.sarcinella.civ@mail.mil
(571) 372-6890
Caution-http://www.denix.osd.mil/pa/

"If you see a misspelling or poor grammer above, blame autocorrect"

From!

Buzzelle, Stanley

To:

Bowers, Terry (CIV OSD OUSD ATL 115)

Cc:

Sarcinella, Andrew I CIV OSD OUSD ATL (US); Seibert, John F CIV OSD OUSD ATL (US); Runi, Suzi

Subject:

[Non-DaD Source] Re: NEPA & Environmental Justice Guide

Date:

Friday, February 5, 2016 17:31:57 AM

All active links contained in this email were disabled. Please verify the identity of the sender, and continu the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Terry.

Regards, Stan

Stan Buzzelle
Attorney-Advisor
U.S. Environmental Protection Agency
Office of Environmental Justice
(202) 564-2316

The preceding message (including any attachments) contains information that may be confidential, be protected by attorney work-product, attorney-client or other applicable privileges and may be exempt from disclosure under applicable law. It is intended to be conveyed only to the named recipient(s). If you received this message in error or if you are not the intended recipient, please notify the sender and delete the message from your system. Any use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Bowers, Terry L CIV OSD OUSD ATL (US) <terry l.bowers 14.civ@mail.mil>

Sent: Friday, February 5, 2016 9:37 AM

To: Buzzelle. Stanley

Cc: Sarcinella, Andrew J CIV OSD OUSD ATL (US); Seibert, John F CIV OSD OUSD ATL (US)

Subject: NEPA & Environmental Instice Guide

Mr. Buzzelle.

Very respectfully.

Terry Bowers

Terry Bowers
Office of the Deputy Assistant Secretary of Defense (Environment, Safety and Occupational Health)
4800 Mark Center Drive (Box #56)
Suite 16G14
Alexandria, VA 22350-3605
terry.l.bowers14.civ@mail.mil
(703) 693-9447

----Original Message----

From: Sarcinella, Andrew J CIV OSD OUSD ATL (US)

Sent: Friday, February 05, 2016 9:04 AM

To: Bowers, Terry L CIV OSD OUSD ATL (US); VanNess, James G (Jim) SES OSD OGC (US)

Cc: Sullivan, Maureen SES OSD OUSD ATL (US)

Subject: NEPA & Environmental Justice

Good Morning Gentlemen;

DASD Sallivan asked me to forward this to you both. It is a product me received at the EJ meeting yesterday.

Have a wonderful day

Joe

Joe Sarcinella, Esq.
Senior Advisor & Liaison for Native American Affairs
U.S. Department of Defense
Office of the Secretary of Defense
OASD(El&E)/ESOH
Email: andrew.j.sarcinella.civ@mail.mil
(571) 372-6890
Caution-http://www.denix.osd.mil/na/

"If you see a misspelling or poor grammer above, blame autocorrect"

Buzzelle, Stanley

To;

Bowers, Terry L CIV OSD OUSD ATL (US)

Cc:

Sarcineila, Andrew I CIV OSD 0USD ATL (US); Seibert, John F CIV OSD 0USD ATL (US); Ruhl, Suzi

Subject:

[Non-DoD Source] Re: NEPA & Environmental Justice Guide

Date:

Friday, February 5, 2016 12:07:47 PM

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Terry.

Thanks,

Stan

Stan Buzzelle
Attorney-Advisor
U.S. Environmental Protection Agency
Office of Environmental Justice
(202) 564-2316

The preceding message (including any attachments) contains information that may be confidential, be protected by attorney work-product, attorney-client or other applicable privileges and may be exempt from disclosure under applicable law. It is intended to be conveyed only to the named recipient(s). If you received this message in error or if you are not the intended recipient, please notify the sender and delete the message from your system. Any use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Buzzelle, Stanley

Sent: Friday, February 5, 2016 11:31 AM

To: Bowers, Terry L CIV OSD OUSD ATL (US)

Cc. Sarcinella, Andrew J CIV OSD OUSD ATL (US); Seibert, John F CIV OSD OUSD ATL (US); Ruhl, Suzi

Subject: Re: NEPA & Environmental Justice Guide

Terry.

Regards,

Stan

Stan Buzzelle
Attorney-Advisor
U.S. Environmental Protection Agency
Office of Environmental Justice
(202) 564-2316

The preceding message (including any attachments) contains information that may be confidential, be protected by attorney work-product, attorney-client or other applicable privileges and may be exempt from disclosure under applicable law. It is intended to be conveyed only to the named recipient(s). If you received this message in error or if you are not the intended recipient, please notify the sender and delete the message from your system. Any use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

From: Bowers, Terry L CIV OSD OUSD ATL (US) <terry.l.bowers14.civ@mail.mil>

Sent: Friday, February 5, 2016 9:37 AM

To: Buzzelle, Stanley

Cc: Sarcinella, Andrew J CIV OSD OUSD ATL (US); Seibert, John F CIV OSD OUSD ATL (US)

Subject: NEPA & Environmental Justice Guide

Mr. Buzzelle.

Ex. 5 Deliberative Process (DOD)

Very respectfully,

Terry Bowers

Terry Bowers

(703) 693-9447

Office of the Deputy Assistant Secretary of Defense (Environment, Safety and Occupational Health) 4800 Mark Center Drive (Box #56) Suite 16G14
Alexandria, VA 22350-3605
terry.l.bowers14.civ@mail.mil

----Original Message-----

From: Sarcinella, Andrew J CIV OSD OUSD ATL (US)

Sent: Friday, February 05, 2016 9:04 AM

To: Bowers, Terry L CIV OSD OUSD ATL (US); VanNess, James G (Jim) SES OSD OGC (US)

Cc: Sullivan, Maureen SES OSD OUSD ATL (US)

Subject: NEPA & Environmental Justice

Good Morning Gentlemen;

DASD Sullivan asked me to forward this to you both. It is a product me received at the EI meeting yesterday.

Have a wonderful day

Joe

Joe Sarcinella, Esq.
Senior Advisor & Liaison for Native American Affairs
U.S. Department of Defense
Office of the Secretary of Defense
OASD(El&E)/ESOH
Email: andrew.j.sarcinella.civ@mail.mil
(571) 372-6890
Caption-http://www.denix.osd.mil/na/

"If you see a misspelling or poor grammer above, blame autocorrect"

From: Bowers, Terry L CIV OSD OUSD ATE (US) To: Vallone, Joseph S CIV OSD OUSD ATL (US) Subject: FW: NEPA & Environmental Justice - clarification on classification Date: Friday, February 5, 2016 2:48:32 PM Attachments: Non-DoD Source Re NEPA Environmental Justice Guide (5.54 KE),msg FYI. --- Original Message---From: Bowers, Terry L CIV OSD OUSD ATL (US) Sent: Friday, February 05, 2016 2:47 PM To: Sullivan, Maureen SES OSD OUSD ATL (US) Cc. Sarcinella, Andrew J CIV OSD OUSD ATL (US); VanNess, James G (Jim) SES OSD OGC (US); Setbert, John F CIV OSD OUSD ATL (US) Subject: NEPA & Environmental Justice - clarification on classification Maureen. V/r. Terry --- Original Message----From: Buzzelle, Stanley [mailto:Buzzelle Stanley@epa.gov] Sent: Friday, February 05, 2016 11:32 AM To: Bowers, Terry L CIV OSD OUSD ATL (US) Cc. Sarcinella, Andrew J CIV OSD OUSD ATL (US); Seibert, John F CIV OSD OUSD ATL (US); Ruhl, Suzi. Subject: [Non-DoD Source] Re: NEPA & Environmental Justice Guide

Terry,

Regards, Stan

Stan Buzzelle
Attorney-Advisor
U.S. Environmental Protection Agency
Office of Environmental Justice
(202) 564-2316

The preceding message (including any attachments) contains information that may be confidential, be protected by attorney work-product, attorney-client or other applicable privileges and may be exempt from disclosure under applicable law. It is intended to be conveyed only to the named recipient(s). If you received this message in error or if you are not the intended recipient, please notify the sender and delete the message from your system. Any use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

----Original Message-----

From: Sullivan, Maureen SES OSD OUSD ATL (US).

Sent: Friday, February 05, 2016 9:51 AM

To: Sarcinella, Andrew J CIV OSD OUSD ATL (US); Bowers, Terry L CIV OSD OUSD ATL (US); VanNess,

James G (Jim) SES OSD OGC (US)

Subject: RE: NEPA & Environmental Justice

Terry and Jim

Maureen Sullivan DASD (ESOH) (703) 595-7957 Blackberry Cell (703) 509-2089 maureen.sullivan18.civ@mail.mil

NEWNEW**
Rosalie Gingerich
Executive Assistam
703-571-0071
rosalie a.gingerich.ctr@mail.mil

----Original Message----

From: Sarcinella, Andrew J CIV OSD OUSD ATL (US)

Sent: Friday, February 05, 2016 9:04 AM

To: Bowers, Terry L CIV OSD OUSD ATL (US); VanNess, James G (Jim) SES OSD OGC (US)

Cc: Sullivan, Maureen SES OSD OUSD ATL (US)

Subject: NEPA & Environmental Justice

Good Morning Gentlemen;

DASD Sulfivan asked me to forward this to you both. It is a product me received at the EJ meeting yesterday.

Have a wonderful day

Joe

Joe Sarcinella, Esq.
Senior Advisor & Liaison for Native American Affairs
U.S. Department of Defense
Office of the Secretary of Defense
OASD(El&E)/ESOH
Email: andrew.j.sarcinella.civ@mail.mil
(571) 372-6890
http://www.denix.osd.mil/na/

"If you see a misspelling or poor grammer above, blame autocorrect"

Bowers, Terry L CIV OSO DUSD ATL (US)

To:

Sullivan, Maureen SES OSD OUSE ATL (US)

-

Sarcinalla, Andrew I CIV OSD OUSD ATL (US); Vaginess, Tames G (1mt) SES OSD OGC (US); Selbert, John F CIV

OSD OUSD ATL (US)

Subject:

NEPA & Environmental Justice - clarification on classification

Date:

Friday, February 5, 2016 2:46:51 PM

Attachments:

Non-DoD Source Re NEPA Environmental Justice Guide (5.54 KB) mse

Maureen.

V/r,

Terry

--- Original Message ---

From: Buzzelle, Stanley [mailte: Buzzelle Stanley@epa.gov]

Sent: Friday, February 05, 2016 11:32 AM

To: Bowers, Terry L CIV OSD OUSD ATL (US)

Cc: Sarcinella, Andrew J CIV OSD OUSD ATL (US): Seibert, John F CIV OSD OUSD ATL (US): Ruhl, Suzi

Subject: [Non-DoD Source] Rc: NEPA & Environmental Justice Guide

Terry.

Regards,

Stan

Stan Buzzelle Attorney-Advisor U.S. Environmental Protection Agency Office of Environmental Justice (202) 564-2316

The preceding message (including any attachments) contains information that may be confidential, be protected by attorney work-product, attorney-client or other applicable privileges and may be exempt from disclosure under applicable law. It is intended to be conveyed only to the named recipient(s). If you received this message in error or if you are not the intended recipient, please notify the sender and delete the message from your system. Any use, dissemination, distribution or reproduction of this message by unintended recipients is not authorized and may be unlawful.

----Original Message----

From: Sullivan, Maureen SES OSD OUSD ATL (US)

Sent: Friday, February 05, 2016 9:51 AM

To: Sarcinella, Andrew J CIV OSD OUSD ATL (US); Bowers, Terry L CIV OSD OUSD ATL (US); VanNess,

James G (Jint) SES OSD OGC (US)

Subject: RE: NEPA & Environmental Justice

Terry and Jim

Maureen Sullivan

DASD (ESOH)
(703) 695-7957

Blackberry Cell (703) 509-2089
maureen.sullivan18.civ@mail.mil

NEWNEW**
Rosalic Gingerich
Executive Assistant
703-571-0071
rosalie.a.gingerich.ctr@mail.mil

--- Original Message

From: Sarcinella, Andrew J CIV OSD OUSD ATL (US)

Sent: Friday, February 05, 2016 9:04 AM

To: Bowers, Terry L CIV OSD OUSD ATL (US); VanNess, James G (Jim) SES OSD OGC (US)

Cc; Sullivan, Maureen SES OSD OUSD ATL (US)

Subject: NEPA & Environmental Justice

Good Morning Gentlemen:

DASD Sullivan asked me to forward this to you both. It is a product me received at the EJ meeting yesterday,

Have a wonderful day

Joe

Joe Sarcinella, Esq. Senior Advisor & Liaison for Native American Affairs U.S. Department of Defense Office of the Secretary of Defense OASD(El&E)/ESOH Email: andrew.j.sarcinella.clv@mail.mil (571) 372-6890 http://www.denix.osd.mil/na/

"If you see a misspelling or poor grammer above, blame autocorrect"

From:

Sowers. Terry L CIV OSD OUSD ATT (US)

Tu:

buzzelle, stabley@ena.gov

CC:

Sarcinglia, Andrew I CIV OSD OUSD ATL (US); Seibert, John F CIV OSD OUSD ATL (US)

Subject: Date: NEPA & Environmental Justice Guide Friday, February 5, 2016 9:37:45 AM

Mr. Buzzelle.

Very respectfully,

Terry Bowers

Terry Bowers

Office of the Deputy Assistant Secretary of Defense (Environment, Safety and Occupational Health) 4800 Mark Center Drive (Box #56)
Suite 16G14
Alexandria, VA 22350-3605

terry.l.howers14.civ@mail.mil

(703) 693-9447

----Original Message----

From: Sarcinella, Andrew J CIV OSD OUSD ATL (US)

Sent: Friday, February 05, 2016 9:04 AM

To: Bowers, Terry L CTV OSD OUSD ATL (US); VanNess, James G (Jim) SES OSD OGC (US)

Cc: Suffivan, Maureen SES OSD OUSD ATL (US)

Subject: NEPA & Environmental Justice

Good Morning Gentlemen:

DASD Sullivan asked me to forward this to you both. It is a product me received at the El meeting yesterday.

Have a wonderful day

Ice

Joe Sarcinella, Esq.
Senior Advisor & Liaison for Native American Affairs
U.S. Department of Defense
Office of the Secretary of Defense
OASD(EI&E)/ESOH

Email: andrew.i.sarcinella.civ@mail.mii

(571) 372-6890 http://www.denix.osd.mil/na/

"If you see a misspelling or poor grammer above, blame autocorrect"

CONFIDENTIALITY NOTICE: This e-mail message, including attachments, if any, is intended only for the person or entity to which it is addressed and may contain information that is privileged, confidential and protected from disclosure under applicable law. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by return e-mail and delete the original message from your system.

I. INTRODUCTION/OVERVIEW

Environmental protection is an important part of sustaining DoD's mission. This stewardship not only preserves irreplaceable resources for future generations, but also ensures the Department has the land, water, and airspace to sustain military readiness. DoD makes it a priority to protect the environment, health, and safety of communities, including environmental justice (EJ) communities that may be affected by the Department's operations. DoD works with communities surrounding its installations and training lands to facilitate communication and explore various approaches to environmental protection, restoration, and planning.

The U.S. Environmental Protection Agency (EPA) defines EJ as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." This report highlights how DoD considers impacts on EJ populations. DoD prepared this report in accordance with the Memorandum of Understanding on Environmental Justice signed by DoD, 15 other Federal agencies, and the White House Council on Environmental Quality (CEQ) on August 4, 2011.

EPA suggests that minority in groups, underserved communities, started the EJ movement to address the environmental inequities in their communities. In the late 1980s to early 1990s, this movement spurred a call to action regarding disproportionate public health dangers to minority and lowincome communities. focus Federal attention on the importance of this movement, President Clinton signed Executive Order (EO) 12898, Federal Actions to Address Environmental Justice Minority Populations and Low-Income Populations on February 11, 1994.

EO 12898 states, "each Federal agency shall develop an agency-wide EJ strategy that identifies and addresses disproportionately high and

Executive Policy on Environmental Justice

EO 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations: Focuses Federal attention on the environmental and human health effects of Federal actions on minority and low-income populations. (February 1994)

Presidential Memorandum accompanying EO 12898; Emphasizes using the National Environmental Policy Act (NEPA) processes to promote EJ by analyzing environmental effects, including human health, economic, and social effects, of proposed Federal actions on minority and low-income communities. (February 1994)

Environmental Justice; Guidance under the National Environmental Policy Act: Includes principles, from the CEQ, for NEPA analyses to determine any disproportionately high and adverse human health or environmental effects to low-income, minority, and tribal populations. (December 1997)

Memorandum of Understanding on Environmental Justice: Expanded the Environmental Justice Interagency Working Group (EJ IWG) to 16 agencies, some of which were not originally included in EO 12898, and adopts an EJ IWG charter. The charter provides the workgroup with more structure and direction to help agencies better coordinate their efforts. (August 2011)

adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." In response to EO 12898, DoD developed its EJ Strategy, in coordination with EPA staff, the EJ IWG, other Federal agencies, and the public. DoD finalized its EJ Strategy in March 1995. The strategy continues to serve as a guide for DoD to incorporate EJ into its policies and programs.

The presidential memorandum that accompanied EO 12898 emphasized the importance of the NEPA procedures for helping Federal agencies identify and address EJ concerns. In response, CEQ, in consultation with EPA and other affected agencies, developed guidance under NEPA. Issued in December 1997, the guidance "further assist[s] Federal agencies with their NEPA procedures so that environmental justice concerns are effectively identified and addressed." Federal agencies follow principles in the guidance to determine whether a proposed project may have a disproportionate impact on an EJ community.

The following sections describe how DoD has been implementing its strategy, complying with NEPA, and supporting EJ.

II. IMPLEMENTING ENVIRONMENTAL JUSTICE STRATEGY AND IMPLEMENTATION PLANS

DoD's strategy provides a framework for the DoD Components – Army, Navy, Marine Corps, Air Force, and the Defense agencies – to consider EJ when conducting normal operations or planning a new project. DoD's EJ strategy is available to the public through the following links: http://www.denix.osd.mil/references/DoD.cfm and http://www3.epa.gov/environmentaljustice/interagency/index.html. Specifically, the implementation of DoD's EJ strategy focuses primarily on the following principles:

- Identifying the impacts of DoD activities on minority and low-income populations;
 - Promoting partnerships with all stakeholders; and
 - Fostering nondiscrimination in DoD programs.

DoD identifies the impacts of its activities on overburdened communities largely through NEPA compliance. Demonstrating its commitment to using NEPA to advance EJ, the Office of the Secretary of Defense (OSD) issued DoD Instruction (DoDI) 4715.9, *Environmental Planning and Analysis*, May 3, 1996.¹ The instruction directs the DoD Components to consider impacts that may have disproportionately high adverse human health or environmental effects on populations covered by EO 12898. Through the NEPA process, DoD Components examine proposed actions; identify and assess potential impacts on all populations, including tribal, minority, and low-income communities; and solicit input from the public early on (e.g., scoping).

In addition, DoD promotes partnerships to support EJ. Through these partnerships, the local community can learn about and have input into decisions regarding environmental cleanup activities at military installations. For example, community members may participate in a

¹ DoD is currently revising DoD Instruction 4715.9 and plans to issue the final version in the summer of 2016.

restoration advisory board (RAB). A RAB is a stakeholder group that meets on a regular basis to discuss environmental cleanup at an installation or property where DoD is overseeing the cleanup process. RABs allow people interested in the environmental cleanup to exchange information with representatives of regulatory agencies, the installation, and the community.

DoD developed policies and delivers comprehensive training programs to foster non-discrimination. These policies and training ensure that employees at all levels within the Department are sensitive to, and fully understand, the unique challenges associated with EJ. The Department issued DoDI 4710.02 American Indian and Alaska Native Policy and DoDI 4710.03 Consultation Policy with Native Hawaiian Organizations ("NHO"). These policies affirm the Department's respect for the traditions and cultures of all native peoples of the United States. Specifically, both policies state that the DoD Components shall conduct meaningful consultation. Consultation helps to avoid or minimize, to the extent practicable and consistent with the law, the effects of the DoD Components' proposed actions on a

property or place of traditional religious and cultural importance to a NHO or of significant impact to Native American Tribal Governments. facilitate greater understanding American indigenous cultures and legal responsibilities to these communities, DoD offers several training courses for its personnel. These courses highlight the requirements of DoD's American Indian and Alaska Native Policy, its NHO policy and other relevant federal laws regarding interactions with both groups. These trainings are held yearly and are taught by subject matter experts with extensive representation

This training went beyond my expectations! The way it linked the basic law, triggers, and consultation made for a truly unique and effective approach to understanding this important subject. You can count on me recommending this training to my colleagues!"

American Indian Cultural Communication Course Training Participant, Savannah, GA

from the Native American and Native Hawaiian communities.

III. EJ STRATEGY UPDATES/REVISIONS

DoD is beginning the process of evaluating its EJ Strategy. The Department will update the strategy as necessary to ensure EO 12898 compliance. In FY 2016, DoD is planning to reestablish its internal EJ workgroup to help the Office of the Deputy Assistant Secretary of Defense for Environment, Safety, and Occupational Health (ODASD(ESOH)) coordinate and better implement its EJ efforts. The workgroup will include representatives who work on EJ issues from ODASD(ESOH) and the DoD Components. Specifically, the workgroup will review the strategy, provide input on updating the strategy, and advise ODASD(ESOH) on EJ activities within DoD.

IV. NOTABLE AND INNOVATIVE PLACED-BASED INTERAGENCY COLLABORATIVE PROJECTS

DoD works with other Federal agencies, local governments, and communities to support complex projects that benefit EJ communities. At a broad level, DoD is a member of the EJ IWG, along with 16 other Federal agencies and White House offices. Chaired by the EPA Administrator, the EJ IWG focuses on integrating EJ into Federal agency programs, policies, and activities. Members of the EJ IWG meet regularly to share lessons learned and collaborate on how to address EJ concerns.

DoD also works collaboratively with its Federal partners at the local level. For example, the U.S. Army Corps of Engineers (USACE) is working with the EPA and Department of Housing and Urban Development (HUD) on the Cano Martin Pena proposed project in Puerto Rico. Through dredging and removal of solid waste, this project will improve natural flushing of the water body. It will also restore 2.2 miles of estuarine channel and nearly 35 acres of mangrove wetlands. The residents will enjoy the estimated \$6,720,000 in average annual recreational benefits, including boating and fishing. Cano Martin Pena is in one of the most heavily urbanized areas of the United States with a population density of 5,000 people per square mile. More than 72 percent of the population is below the poverty level. The residents are exposed to below standard sanitary and waste disposal conditions that degrade water quality. The proposed ecosystem restoration project is part of the President's Puerto Rico Task Force that will significantly improve conditions for the people of Cano Martin Pena and Puerto Rico.

Another example of place-based collaboration is on Little Diomede, Alaska, one of the few remaining remote subsistence island native villages. The residents of Little Diomede primarily subsist on hunting marine mammals. Due to climate change and melting arctic ice, the migratory patterns of marine mammals in the area have been altered. Currently, the small boat harbor in Little Diomede provides only limited protection for launching and retrieving the small hunting vessels. In addition, the limited marine access impairs the safe operation of medical and rescue vessels.

On August 10, 2015, the USACE Chief of Engineers recommended harbor improvements in accordance with Section 2006 of the Water Resources Development Act of 2007 for Remote and Subsistence Harbors. The City of Diomede, the Native Village of Diomede, and Kawerak, Inc. support the recommended plan to provide access for residents of Little Diomede for subsistence hunting and rescue vehicles. The plan would give this population an average of 21 additional launching days (an increase of approximately 40 percent) for hunting annually.

The USACE is also a major partner in the large-scale "Greening Los Angeles Project." The USACE, National Park Service, Department of Interior, EPA, and state and local governments are working together to restore the Los Angeles River. The 52-mile long Los Angeles River flows through many diverse communities, several of which are disproportionately Latino compared to the area as a whole. Many of the children in these communities live in poverty, have limited access to recreation space, and suffer

disproportionately from chronic health conditions. In addition, the Los Angeles River watershed is one of the top 25 global hot spots that is threatened by rapid biodiversity loss in the second largest urban area in the United States.

In December 2015, the USACE Chief of Engineers approved and submitted the locally

preferred Los Angeles River ecosystem restoration plan to the Secretary of the Army. This approval brings the restoration project closer to congressional authorization and funding. The plan is expected to restore nearly 70 acres of riparian habitat and improve access to recreational resources. The

"[T]his plan represents more than 10 years of hard work and unprecedented collaboration, and gives us the opportunity to transform both the river and our city."

Los Angeles Mayor Eric Garcetti

recommended plan will also provide significant regional economic development benefits. These benefits include nearly 19,000 more jobs representing \$5 billion in labor income, and redevelopment opportunities for the Verdugo Wash confluence and Chinatown/Cornfields areas. The community will also benefit from new public access to restored natural areas with recreational amenities.

V. COMMUNITY ENGAGEMENT ACTIVITIES AND RESULTS/IMPACTS

DoD supports local projects that foster strong partnerships with community stakeholders. These partnerships build trust and credibility. Specifically, the DoD Components foster relationships through RABs and initiatives outlined in community relations plans (CRPs).

Restoration Advisory Boards

RABs are community-oriented forums that encourage and facilitate communication between citizens and DoD facility decision makers. RAB participants review progress of environmental cleanup activities and provide input to installation decision makers. Such forums help the DoD Components develop cleanup strategies that will not adversely affect communities that surround the installations. DoD provides funding to establish, operate, and support RABs. This support ensures that local citizens are able to have a forum to provide meaningful input regarding cleanup activities in their community. In FY 2015, DoD spent \$2.8 million to support 144 RABs aligned to activities at 159 installations.

RAB participants may include representatives from an installation or local community; state, local, or tribal governments; Federal, state, or local regulatory agencies; and local activists. DoD's RAB handbook provides guidance to ensure RAB membership is representative of the community that surrounds the DoD facility. DoD had 53 installations report that their RAB membership included residents from low-income and minority populations.

RABs further enable the DoD Components to effectively partner with minority and low-income communities to facilitate regular communication, transparency, and trust. For example, through the RAB at Military Ocean Terminal – Concord (MOTCO), California, the Army forged a cooperative relationship with the surrounding community to resolve concerns.

MOTCO, which is located in the economically diverse eastern San Francisco Bay area,² receives and transfers munitions. The community is interested in the activities at MOTCO because of the explosives concern associated with handling munitions.

In addition to ongoing operations, the Department is also conducting environmental restoration activities at the site. For a time, hazardous waste generated from environmental restoration activities at MOTCO were trucked out the eastern gate through the Bay Point community. MOTCO RAB members raised concerns about traffic, noise, and safety of the truck route through Bay Point. In response, the Army offered a plan to revise the truck route. The new route resulted in additional operational cost to and scheduling constraints for the Army. However, the plan resolved the community's concerns. Community members continue to meet quarterly as part of the MOTCO RAB's activities. The RAB also tours the site annually, regularly reviews documents, and provides input to the cleanup program. This example demonstrates how the Department uses a RAB to engage and inform a community that is oftentimes disproportionately impacted.

RAB members can also use the Technical Assistance for Public Participation (TAPP) program to obtain private sector, independent technical assistance. The TAPP program helps RABs better understand the scientific and engineering issues underlying an installation's environmental cleanup activities. RABs are eligible to receive TAPP funding when they need support reviewing human health risks, assessing technology, interpreting technical documents, and participating in relative risk evaluations. TAPP funding enables RABs and the affected community to provide meaningful input and make decisions regarding environmental cleanup. In addition, RABs can use TAPP funding to translate important public documents or prepare documents using non-technical language.

Community Relations Plans

Each installation, Base Realignment and Closure location, and Formerly Used Defense Site conducting environmental cleanup in accordance with the Comprehensive Environmental Restoration, Compensation, and Liability Act (CERCLA)³ develops a CRP. The CRP defines community outreach and involvement activities. It also provides a vehicle for DoD to gather information from the community about current issues and concerns related to cleanup. Specifically, the Navy develops a CRP for all sites they identify as Environmental Restoration Program sites. The Navy uses the information collected from the community (e.g., high-priority concerns, how they want to be involved in decision-making, and information needs) as the foundation for their CRPs.

The Army gained the public's trust to provide accurate information through updating Ft. Gillem's Community Involvement Plan⁴ in 2015. Specifically, the Army conducted interviews and distributed a survey to community members. Through the interviews, the

² In 2007, the EPA awarded an EJ grant to the relatively rural Bay Point community that immediately surrounds MOTCO.

³ CERCLA established "Superfund" to clean up uncontrolled or abandoned hazardous waste sites.

⁴ A Community Involvement Plan is equivalent to a CRP.

Army discovered that the community prefers to learn about the status of cleanup activities through public meetings, speakers at community forums, fact sheets, e-mail, or a website.

VI. TARGETED RESOURCES TO OVERBURDENED, UNDERSERVED, AND ECONOMICALLY-DISTRESSED COMMUNITIES

DoD allocates resources to programs that directly benefit EJ communities. The following describes these programs in greater detail.

Native American Lands Environmental Mitigation Program

In 1996, OSD developed the Native American Lands Environmental Mitigation Program (NALEMP) to address the effects of past military operations on Native American lands and Alaska Native Claims Settlement Act-conveyed properties. NALEMP helps mitigate impacts to tribal lands resulting from hazardous materials, munitions debris, unsafe buildings, lead-based paint, asbestos, and abandoned equipment. Most environmental cleanup programs do not consider the potential effects that past military operations may have on traditional cultures (e.g., subsistence activities, cultural practices). Therefore, some remnants of DoD activities, such as abandoned buildings and debris, typically rank as a lower cleanup priority or are not eligible for cleanup. In addition, because many properties conveyed via the Alaska Native Claims Settlement Act of 1972 are located in remote areas with low population densities, effects on these lands are often considered lower priority sites. NALEMP provides DoD with a framework for assessing and mitigating the EJ effects associated with these sites.

OSD received \$12 million from Congress in FY 2015 for NALEMP. Under NALEMP, DoD enters into Cooperative Agreements (CAs) with tribal governments. During FY 2015, OSD monitored progress on over 30 ongoing NALEMP CAs with tribes. DoD uses consultation to develop the CAs with NALEMP partner tribes. Specifically, 16 tribes benefitted from funding provided under NALEMP in FY 2015 to mitigate environmental contamination. To date, DoD has executed 279 CAs with 60 tribal nations at a total funding level of over \$122 million.

NALEMP involves tribes from nearly a dozen states. DoD works with affected tribes on a government-to-government basis (via CAs) to determine how best to mitigate the environmental impact(s). Two recent CAs between DoD and The Native Village of Tazlina, Alaska and the Pueblo of Santa Ana, New Mexico describe how NALEMP helps affected tribes.

The Native Village of Tazlina is a small community in south central Alaska where the U.S. Air Force and Army operated from 1943 to 1970. The purpose of the FY 2015 NALEMP CA with the Native Village of Tazlina is to demolish a 300,000-gallon aboveground fuel storage tank, and remove and dispose of 11 acres of associated debris. It is important to the tribe that the land is restored because the presence of debris limits their ability to continue and expand subsistence hunting. In addition, the debris poses a safety concern. The Native Village of Tazlina expects to complete the demolition and removal project by the end of 2017.

Training at two former precision bombing ranges for Kirtland Air Force Base resulted in munitions debris scattered over 320 acres of tribal land. The FY 2015 NALEMP CA with the Pueblo of Santa Ana provides resources for the tribe to coordinate and develop a strategic plan for DoD-related environmental projects. The strategic plan will outline all known impacts on or affecting Santa Ana lands. This information will help the DoD and the tribe prioritize these sites for cleanup. Tribal staff will participate in a 40-hour training course on the safe operation of mitigation projects at hazardous sites. This information will enhance their capacity to oversee environmental projects. Cleanup of these areas is vital to the tribe because they use the land for subsistence food gathering, and traditional and cultural purposes. The Pueblo of Santa Ana expects to complete work at these sites by the end of 2016.

Innovative Readiness Training Program

DoD's Innovative Readiness Training (IRT) Program establishes military-civilian partnerships to benefit DoD and communities in need. IRT offers on the job training to military personnel while providing services, such as construction and medical care, to an underserved civilian community. As a result, DoD Military Service members get hands-on, real world training to prepare them for their wartime missions, while underserved communities benefit from skills provided by Military Service members. The IRT's Advisory Council builds awareness of IRT's mission through community and government leadership. For example, the DoD Senior Tribal Liaison is a member of the IRT Advisory Council. He helps identify potential projects to support tribal communities in need. Below are examples of IRT's success helping disadvantaged communities.

In June 2015, the IRT partnered with Meigs County in the Appalachia region in Ohio. Through this partnership, IRT provided free medical, behavioral health, dental, and optical screening services to county residents. The "Warrior Medics" of the Southeast Medical Area Readiness Support Group, Army Reserve Medical Command worked alongside Navy Sailors to set up clinics at Meigs High School. The Meigs County residents benefitted from free medical services that they previously did not have access to or could not afford. While providing this important service to the community, the reservists received their annual training. The Delta Regional Authority, a Federal agency covering the eight states of the Mississippi Delta, also coordinated Army medical units through the IRT. In August 2015, the Army medics provided Alabama residents with no-cost medical, vision, and dental care in Camden, Demopolis, and Selma. These areas of Alabama have very high rates of poverty and unemployment.

In October 2015, 18 members of the US Naval Construction Forces, from Naval Mobile Construction Battalion (NMCB) 133 (also known as Seabees), arrived at the Fort Belknap Indian Reservation in Montana. The Fort Belknap IRT mission is to provide much needed housing for families of the local Assiniboine and Gros Ventre tribes.

During six weeks, 133 Seabees moved over 40,000 cubic yards of soil, establishing 27 house pads, four roads, and two alleys. They turned what was

"I hope that one day, they'll be holding the keys to their own homes," said Tribal President Mark Azure during the Fort Belknap groundbreaking ceremony held September 2, 2015 once a field of tall grass into the beginning of a 160 unit housing development. The IRT project significantly benefited the Fort Belknap Reservation, providing over \$650,000 worth of construction service to the community. The Seabees project generated excitement for future community progress. Fort Belknap Transportation Director John Healy expressed hope that once the initial housing development site is established, a new Wellness Center can be constructed to promote health and wellness within the community. Additionally, the community began discussing long-term green energy production with wind turbines and solar panels. "The impact of what our Seabees accomplished here will be felt for many years to come," expressed Ensign Alex Liu, Detail Montana Officer in Charge. "This IRT was an awesome way to give back to the community. I hope Seabees will have the opportunity to come back and continue to make contributions in the future."

VII. IMPLEMENTATION PROGRESS IN EJ IWG FOCUS AREAS

This section features DoD activities in NEPA, one of the EJ IWG focus areas.

NEPA

Background: NEPA is designed to ensure that all communities and people across this Nation are afforded an opportunity to live in a safe and healthy environment. NEPA requires Federal agencies, before they act, to determine the environmental consequences of their proposed actions for the dual goals of informed agency decision-making and informed public participation. The Federal actions subject to NEPA include, but are not limited to those undertaken by DoD, such as: adoption of official policy, programs or plans; Federal construction projects; plans to manage and develop Federal lands; and Federal approvals of non-Federal activities such as grants, licenses, and permits. Additionally, NEPA gives communities the opportunity to access public information on and participate in the agency decision-making process for these varied Federal actions. The Presidential Memorandum accompanying Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, underscores the importance of procedures under NEPA to "focus Federal attention on the environmental and human health conditions in minority communities and low-income communities with the goal of achieving environmental justice." Further, the Presidential Memorandum underscores public participation opportunities under NEPA, stating: "Each Federal agency shall provide opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of meetings, crucial documents, and notices."

NEPA Committee of the Federal IWG on EJ: DoD is a member of the NEPA Committee of the Federal IWG on EJ and plans to become a more active participant in 2016. The purpose of the NEPA Committee is to improve the effective, efficient, and consistent consideration of EJ in the NEPA process through sharing of promising practices and lessons learned developed by Federal departments and agencies since EO 12898 was signed in 1994. Thus, the NEPA Committee supports Federal agency NEPA implementation precisely to "focus Federal attention on the environmental and human health conditions in minority communities and low-income communities with the goal of achieving environmental justice."

Since it was established in May 2012 by the Federal IWG on EJ, the NEPA Committee has employed a robust and innovative process to fulfill its purpose. Co-chairs of the Committee and Subcommittees are from EPA, DOT, DOJ, and HHS, while working groups are chaired by USDA-APHIS, DOE, and EPA. Further, there has been active participation by CEQ, DHS, DOE, DOI (BLM, NPS, BOR, and FWS), DOJ, DOT (FTA, FHWA), HHS, HUD, USDA (APHIS, USFS), EPA (OEJ, OFA, and Regions), GSA, NRC, and VA. Deliverables of the NEPA Committee include:

- Community of Practice: Monthly interagency meetings have established a vehicle for cross agency training and dialogue for addressing complex issues through sharing of experiences and effective practices in addressing EJ in the NEPA process
- EJ and NEPA Agency Resource Compendium: The compendium, available on the Federal IWG on EJ webpage, gathers publically available information from twenty Federal Agencies (e.g. regulations, orders, guidance, EJ strategic plans) on the intersection of EJ and NEPA into one place and hyperlinks them so that documents can be easily accessed. A select set of key references are also available on the EPA NEPA Webpage.
- Promising Practices on EJ Methodologies in NEPA Reviews: The NEPA committee is drafting a compilation of promising practices which represents the results of research, analysis, and discussions by participants of the NEPA Committee concerning the interface of EJ considerations through NEPA processes. It represents the professional expertise of the NEPA Committee participants, and their collective thinking and thoughtful deliberation of information sources and is not formal agency guidance. The Draft final document will be presented to the Chair of the Federal IWG on EJ.
- National Training Product on EJ and NEPA: The NEPA Committee is drafting a National Training Product on EJ and NEPA. This training product is a companion to EJ Methodologies that provides history of NEPA and EJ, promising practices, and examples from Federal agency NEPA reviews.
- Lexicon: The NEPA Committee is drafting a lexicon and compendium of key terms as used by Federal agencies to consider EJ in NEPA reviews.

Agency Consideration of EJ in NEPA Activities. In addition to the efforts by the NEPA Committee, DoD has undertaken the following efforts to advance consideration of EJ in NEPA activities. DoD recognizes the importance of public engagement through the NEPA process. The Army's NEPA webpage notes that "NEPA provides opportunities for the Army to receive input from those who live outside its installations. The Army takes seriously its environmental and public outreach responsibilities. One of the basic principles of NEPA is that people make better decisions when they have clear information about the consequences and trade-offs associated with taking any given course of action."

The DoD Components have developed guidance for NEPA compliance, such as the U.S. Marine Corps NEPA Manual (revised in 2011). This manual notes that EJ should be addressed as its own resource category. Specifically, the EJ section of an environmental impact statement (EIS) should address the geographic distribution of minority populations, geographic distribution of low-income populations by poverty status, consumption patterns of populations that principally rely on fish and/or wildlife for subsistence, and access to resources.

The Marine Corps supports EJ through NEPA by translating announcements and other related project materials into other languages. For example, the Marine Corps published notices in Spanish language newspapers for the West Coast basing of the Joint Strike Fighter (F-35) EIS. They also translated the EIS executive summary into Spanish. In addition, for the commonwealth of the Northern Mariana Islands Joint Military Training EIS/Overseas EIS, the Marine Corps translated the factsheets into Chamorro and Carolinian, and provided translators at public meetings. These translation activities ensure the minority and low-income populations are able to read and understand project information.

In FY 2015, the DoD Components prepared a number of NEPA documents to evaluate the potential impacts of projects on human health and the environment. For example, the Air Force continued work on the EIS for the Gulf Regional Airspace Strategic Initiative Landscape Initiative at Eglin Air Force Base, Florida. The intent of this initiative is to form partnerships to identify alternate compatible locations for training activities when existing military bases are not able to provide this space. During the early phases of the project, the Air Force recognized EJ concerns that required careful consideration. As a first step, the Air Force updated mailing lists and distributed flyers to ensure that the lower socioeconomic status residents living on privately owned land within the boundaries of state forests received proper notification. In addition, the Air Force moved one of the public hearings to a location more accessible to the EJ population. After considering EJ though the NEPA process, the Air Force revised the scope of its proposed training activities. The Air Force adjusted flight routes and landing locations, and added buffers around sensitive areas to mitigate the overall total impact of its operations.

In conclusion, the NEPA Committee is providing Federal departments and agencies with promising practices organized in a coordinated, functional framework as identified by NEPA practitioners across the Federal family. This community of practice is working in a collaborative manner to address complex EJ issues in a timely manner. Ultimately, the NEPA Committee intends that its efforts provide the groundwork for a renewed and dynamic process to advance EJ principles through NEPA implementation.

APPENDIX

List of Acronyms

CA Cooperative Agreements

CEQ Council on Environmental Quality

CERCLA Comprehensive Environmental Restoration, Compensation, and Liability Act

CRP Community Relations Plan

DoDI Department of Defense Instruction
EIS Environmental Impact Statement

EJ Environmental Justice

EJ IWG Environmental Justice Interagency Working Group

EO Executive Order

EPA U.S. Environmental Protection Agency

HUD U.S. Department of Housing and Urban Development

IIS Interagency and International Services

IRT Innovative Readiness Training
LACDA Los Angeles County Drainage Area
MOTCO Military Ocean Terminal – Concord

NALEMP Native American Lands Environmental Mitigation Program

NEPA National Environmental Policy Act
NMCB Naval Mobile Construction Battalion
OSD Office of the Secretary of Defense

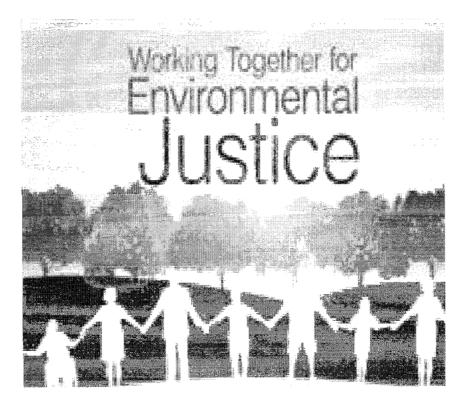
ODASD(ESOH) Office of the Deputy Assistant Secretary of Defense for Environment, Safety,

and Occupational Health

RAB Restoration Advisory Board

TAPP Technical Assistance For Public Participation

USACE U.S. Army Corps of Engineers



Making a Visible Difference in Overburdened Communities

EJ IWG Framework for Collaboration

Fiscal Years 2016 - 2018

12/23/2015

Table of Contents

| Intro | ductionduction | 3 | | | |
|-------|---|--|--|--|--|
| Back | kground: Federal Interagency Working Group on Environmental Justice4 | | | | |
| EJ IW | /G Framework for Collaboration Goals | teragency Working Group on Environmental Justice | | | |
| ١. | Enhance communication and coordination to improve the health, quality-of-life, and economic opportunities in overburdened communities | 6 | | | |
| II. | Enhance multi-agency support of holistic community-based solutions to solve environmental justice issues | 6 | | | |
| III. | Advance interagency strategies to identify and address environmental justice concerns in agency programs, policies, and activities | | | | |
| IV. | Develop partnerships with academic institutions to assist in providing long-term technical assistance to overburdened communities | 6 | | | |
| Appe | endix A: Federal Interagency Working Group on Environmental Justice Governance Structure | 7 | | | |
| Арре | endix B: EJ IWG Framework for Collaboration - Year 2016 Priorities | 11 | | | |
| Appe | endix C: Annual Progress Report for the Framework | 12 | | | |

Introduction

The Federal Interagency Working Group on Environmental Justice (EJ IWG) plays a central role in creating healthy and sustainable communities by bringing together the federal family to address critical environmental justice issues. The EJ IWG provides leadership, guidance, and support to federal agencies by:

- Coordinating a focused and concerted effort by federal agencies to directly address the
 environmental, social, economic, and public health burdens in minority, low-income, indigenous
 and tribal communities;
- Implementing policies that have measurable impacts on environmental justice;
- Focusing federal agency resources and technical assistance to address disproportionately high and adverse health or environmental effects; and
- Developing partnerships with colleges, universities, and other organizations outside of the federal government to facilitate long-term support for, and improvement in, overburdened communities.

The EJ IWG Framework for Collaboration (Framework) outlines goals for the next three years that advance greater federal agency collaboration to improve quality of life and support economic opportunities in overburdened¹ and under-resourced communities. Increased coordination and cooperation among federal agencies will promote holistic community-based solutions to environmental justice issues and ensure that the public has meaningful opportunities for participation in the decision-making process.

Successful community engagement meets communities "where they are" by employing approaches to outreach and communication that they value and find effective. The EJ IWG listening sessions held across the country between 2011 and 2015 generated numerous public comments that influenced the development of the draft Framework. The draft also underwent a public comment period and the EJ IWG reviewed and considered all of the comments received to develop this final Framework document. The Framework builds upon the earlier work of the EJ IWG and outlines activities, priorities, and resources to strengthen a comprehensive federal approach to improve the health and sustainability of those communities that need the most assistance. As the EJ IWG and its committees implement the Framework, the input received during the public comment period will continue to be incorporated, as appropriate, and the EJ IWG will work to ensure that its community engagement efforts are successful.

¹ https://compliancegov.zendesk.com/hc/en-us/articles/211430208-What-is-the-definition-ofoverburdened-community-that-is-relevant-for-EPA-Actions-and-Promising-Practices-

Background: Federal Interagency Working Group on Environmental Justice

The EJ IWG facilitates the active involvement of all federal agencies to implement Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," (Order)². The Order states that federal agencies must identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations.

Established by the Order, the EJ IWG provides a forum for federal agencies collectively to advance environmental justice principles. The EJ IWG works as a federal family to assist communities in building the capacity to promote and implement innovative and comprehensive solutions to address environmental justice issues.

The EJ IWG is chaired by the EPA Administrator and includes federal agencies and White House offices. The EJ IWG has standing committees and other committees established as necessary to carry out responsibilities outlined by the Order. The EJ IWG consists of senior leadership representatives, senior staff representatives, and other persons designated by a federal agency. Additional information on the EJ IWG governance structure and a list of agencies can be found in Appendix A of this document.

In 2011, the EJ IWG agencies took a landmark step to support environmental justice by signing a Memorandum of Understanding³ on Environmental Justice and Executive Order 12898 (MOU) and adopting a Charter. The MOU serves as a formal agreement among federal agencies to recommit to addressing environmental justice through a more collaborative, comprehensive, and efficient process. The Charter, revised in late 2014,⁴ outlines the EJ IWG governance structure which includes the following four standing (permanent) committees:

- · Public Participation
- · Regional Interagency Working Groups
- · Strategy and Implementation Progress Report
- Title VI of the Civil Rights Act

²Executive Order No. 12898, 59 F.R. 7629 (1994):

http://www.epa.gov/environmentaljustice/resources/policy/exec_order_12898.pdf

³ Memorandum of Understanding on Environmental Justice and Executive Order 12898 (2011): http://www3.epa.gov/environmentaljustice/resources/publications/interagency/ej-mou-2011-08.pdf

⁴ Charter for Interagency Working Group on Environmental Justice:

http://www3.epa.gov/environmentaljustice/resources/publications/interagency/iwg-charter-2014.pdf

In addition, consistent with the Presidential Memorandum⁵ issued with the Order, and based on public recommendations, every three years the EJ IWG determines if there are additional focus areas for federal agencies to consider and address. During years 2016 – 2018, the EJ IWG will maintain committees to address the following five focus areas:

- Native Americans/Indigenous Peoples
- Rural Communities
- Impacts from Climate Change
- Impacts from Commercial Transportation (Goods Movement)
- National Environmental Policy Act (NEPA)

These committees consist of senior level agency staff and are responsible for working together with state and local governments, tribes, and local communities to improve the health of American families and protect the environment all across the country.

EJ IWG Framework for Collaboration Goals

The EJ IWG developed this Framework, which builds on decades of environmental justice work, to focus the collective efforts of the federal agencies on four goals for years 2016, 2017, and 2018:

- I. Enhance communication and coordination to improve the health, quality-of-life, and economic opportunities in overburdened communities;
- II. Enhance multi-agency support of holistic community-based solutions to solve environmental justice issues;
- III. Advance interagency strategies to identify and address environmental justice concerns in agency programs, policies, and activities; and
- IV. Develop partnerships with academic institutions to assist in providing long-term technical assistance to overburdened communities.

Outlined below are a few ways the EJ IWG committees will work to achieve the goals over the next three years.

⁵ Presidential Memorandum for Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 1994:

http://www.epa.gov/environmentaljustice/resources/policy/clinton_memo_12898.pdf

- I. Enhance communication and coordination to improve the health, quality-of-life, and economic opportunities in overburdened communities
 - Enhance community outreach to provide greater public access to federal information, resources, and trainings;
 - Increase public access to and understanding of data, mapping, and assessment tools to address environmental justice issues; and
 - Maximize opportunities for federal agency leadership to consider stakeholder feedback.
- II. Enhance multi-agency support of holistic community-based solutions to solve environmental justice issues
 - Enhance community capacity building by sharing lessons learned, promising practices, and resources;
 - Identify and leverage federal resources to address environmental challenges and build sustainable community infrastructure; and
 - Foster federal interagency collaboration on a regional, state, tribal, and local level through various outreach efforts and other activities.
- III. Advance interagency strategies to identify and address environmental justice concerns in agency programs, policies, and activities
 - Increase community awareness of federal agency environmental justice strategies and goals to get feedback that assists the federal family in implementation;
 - Identify opportunities to highlight interagency community solutions to help advance implementation of federal environmental justice policies and guidance; and
 - Improve implementation of federal environmental justice policies and guidance by creating appropriate benchmarks.
- IV. Develop partnerships with academic institutions to assist in providing long-term technical assistance to overburdened communities
 - Improve technical assistance to overburdened communities by leveraging programs such as the College/Underserved Community Partnership Program (CUPP);
 - Encourage enhanced training from federal agencies to academic institutions, particularly
 minority serving academic institutions, in areas such as grant writing and access to federal
 resources organized by community issues, rather than federal agency; and
 - Develop internship opportunities for college students in overburdened communities to enhance
 the knowledge base of the communities, and educate youth on the conditions in overburdened
 communities.

Appendix A: Federal Interagency Working Group on Environmental Justice Governance Structure

EJ IWG Federal Agencies

Department of Interior

White House Office:

Council on Environmental Quality

Environmental Protection Agency (Chair)

Department of Homeland Security

Department of Housing and Urban Development

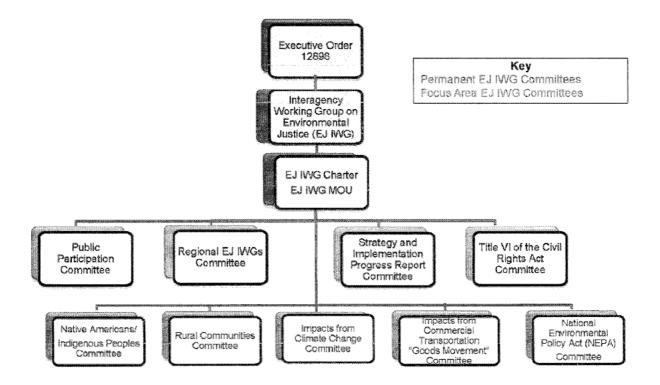
| | entire interior rotection Agency (chair) | | bepartment of interior |
|---|--|---|---------------------------------|
| • | Department of Agriculture | 8 | Department of Justice |
| • | Department of Commerce | • | Department of Labor |
| • | Department of Defense | | Department of Transportation |
| • | Department of Education | • | Department of Veteran's Affairs |
| • | Department of Energy | 8 | General Service Administration |
| | Department of Health and Human Services | | Small Business Administration |

The EJ IWG responsibilities and authority to act on environmental justice issues are established by Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," with two accompanying documents: 1) the 2011 Memorandum of Understanding on Environmental Justice and Executive Order 12898 and 2) the Charter for the Interagency Working Group on Environmental Justice. Both documents are available at:

http://www3.epa.gov/environmentaljustice/interagency/resources.html.

The chart below outlines the committee structure and focus areas for the EJ IWG. The Charter created the Permanent committees listed in green. Consistent with the MOU, at least every three years, the EJ IWG will, based in part on public recommendations identified in annual progress reports, identify important areas for federal agencies to consider and address, as appropriate, in environmental justice strategies, annual implementation progress reports, and other efforts.

EJ IWG Governance Structure 2016 - 2018



December 2015

| EJ IWG STANDING COMMITTEES (PERMANENT, Displayed in green on the Governance Chart) | | | | | |
|---|--|--|--|--|--|
| COMMITTEE NAME | PURPOSE OF COMMITTEE | | | | |
| Public Participation | Increases transparency, language accessible outreach and addresses technological barriers. Develops listening sessions and opportunities for public input. Facilitates collaboration and public participation with federal agencies and external stakeholders. Utilizes traditional means of communication and social media to build participation. Helps coordinate responses to public input. | | | | |
| Regional Interagency Working Groups | Provides targeted and coordinated technical assistance; develops relationships between federal field and regional staff; and develops best practices for prioritizing environmental justice concerns. Develops community resource materials. Strengthens education, training, and/or engagement on environmental justice among local and state agencies. | | | | |
| Strategy and Implementation Progress Report | Serves as a resource for federal agencies as they review, update, or develop their environmental justice strategy, and the annual implementation progress reports. Works with agencies to help coordinate programs, policies, and activities. Coordinates EJ IWG Senior Leadership meetings. Manages implementation of the EJ IWG Framework for Collaboration and standard operating procedures. | | | | |
| Title VI of the Civil Rights Act | Serves as a resource to help agencies connect their civil rights enforcement responsibilities with their other efforts to achieve environmental justice. | | | | |

| EJ IWG AD HOC COMMITTEES (AD HOC, Displayed in light blue on the Governance Chart) | | | | |
|---|--|--|--|--|
| COMMITTEE NAME | PURPOSE OF COMMITTEE | | | |
| Native Americans/Indigenous Peoples | Facilitates effective coordination and collaboration of federal agencies in identifying and addressing issues of environmental justice that are of concern to federally recognized tribes, indigenous peoples (including state recognized tribes, tribal members, indigenous community-based organizations, native Hawaiians, Alaska natives, and individual Native Americans), and others living in Indian country. | | | |
| Rural Communities | Supports efforts to: ensure collaboration between federal agencies and rural environmental justice communities, develop economic opportunities so rural overburdened communities are self-sustaining and economically thriving, and coordinate federal agency investments to further holistic community-based solutions that reduce environmental justice issues. | | | |

| EJ IWG AD HOC COMMITTEES (AD HOC, Displayed in light blue on the Governance Chart) COMMITTEE NAME PURPOSE OF COMMITTEE | | | | | |
|--|--|--|--|--|--|
| Impacts from Climate Change | Supports collaboration across federal agencies and with communities with environmental justice concerns around climate change-related issues including facilitating consideration of vulnerable populations in agency climate adaptation activities; providing information, services, and data to help make communities more resilient; providing relevant tools, systems, and policies to communities and businesses to mitigate impacts on natural resources and human health due to climate change; and ensuring two-way communication around climate-change related issues. Implements the Educate, Motivate and Innovate (EMI) Project. | | | | |
| Impacts from Commercial Transportation "Goods Movement" | Serves as a resource to coordinate with other federal agencies on reducing environmental and health effects of commercial transportation and supporting infrastructure ("goods movement") that impact low-income, minority and tribal populations (overburdened communities). Ensures that overburdened communities have greater opportunities to access benefits from federal efforts related to goods movement. | | | | |
| National Environmental Policy Act (NEPA) | Improves effective, efficient and consistent consideration of environmental justice principles in the NEPA process by sharing promising practices and lessons learned developed by federal departments and agencies. | | | | |

Appendix B: El IWG Framework for Collaboration - Year 2016 Priorities

The Framework spans a three-year timeframe. The 2016 priorities are a snapshot of the activities planned for implementation by the end of October 2016. The EJ IWG will produce an annual EJ IWG Framework for Collaboration Progress Report and increase opportunities for public input and engagement with the EJ IWG.

Collaboration

- Identify, highlight, and replicate, where possible, successful community-based models that leverage federal investments, technical assistance, and community-based resources; use the EJ IWG website and other appropriate methods to share these success stories with stakeholders.
- Increase collaboration and leveraging of resources for capacity building, economic investments, and research (e.g., climate, traditional cultural resources) in rural communities.
- Improve the effective, efficient, and consistent consideration of environmental justice issues in the National Environmental Policy Act (NEPA) process by promoting the use of Promising Practices for EJ Methodologies in NEPA Reviews.
- Promote awareness of and solutions to community-based environmental challenges associated with Goods Movement (commercial transportation of freight and supporting infrastructure) in and through overburdened communities and communities enduring adverse health impacts as a result of goods movement.

Community Resources

- Issue and post on the EJ IWG home page a memorandum to federal funding recipients on how
 Title VI of the Civil Rights Act of 1964, as amended, applies to federally funded activities that
 have an impact on the environment and human health; use other appropriate methods to share
 the information provided in the memorandum with communities.
- Update and post on the EJ IWG home page a Community-Based Federal Environmental Justice Resource Guide and Directory and make the document available in multiple languages; use other appropriate methods to share the resource guide and directory information with communities.
- Post on the EJ IWG home page an Annual Framework Progress Report and the annual agency Environmental Justice Implementation Progress Reports; use other appropriate methods to share the information in these reports with communities.

External Communications and Outreach

- Through traditional and electronic communication methods, select EJ IWG Committees will
 conduct trainings, webinars, or presentations on EJ IWG focus areas to inform, engage, and
 provide community residents and stakeholders an opportunity to provide feedback.
- The Public Participation Committee (PPC) will identify opportunities to increase transparency
 and address the linguistic, cultural, and technological barriers that exist between federal
 agencies and overburdened communities.
- The PPC will focus on prioritizing in-person outreach efforts through community visits and public dialogue sessions that solicit feedback from residents directly experiencing environmental impacts. The PPC will also explore opportunities to add state and local government engagement dialogue sessions as part of existing agency community outreach efforts.

Appendix C: Annual Progress Report for the Framework

The EJ IWG will post annual progress reports (i.e., 2016, 2017, and 2018) on the EJ IWG website (www.epa.gov/environmentaljustice/interagency) to share its progress in implementing the EJ IWG Framework for Collaboration. In addition, each federal agency will include relevant Framework highlights in their annual Environmental Justice Implementation Progress Reports posted in accordance with the 2011 Memorandum of Understanding on Environmental Justice and Executive Order 12898.

Send Comments to ejstrategy@epa.gov

⁶ Memorandum of Understanding on Environmental Justice and Executive Order 12898 (2011): http://www3.epa.gov/environmentaliustice/resources/publications/interagency/si-mou-2011-08.pdf



Making a Visible Difference in Overburdened Communities

Promising Practices for EJ Methodologies in NEPA Reviews

Report of the Federal Interagency Working Group on Environmental Justice & NEPA Committee (February 2016)

This material is not intended or offered as legal advice. It is non-binding, informal, and summary in nature, and the information contained herein does not constitute rules or regulations. As such, it is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, that are enforceable at law by any party, in any criminal, civil, or administrative matter.

NEPA COMMITTEE PARTICIPANTS

NEPA Committee Co-Chairs:

Suzi Ruhl, US EPA; Helen Serassio, US DOT

Community of Practice Subcommittee Co-Chairs:

Stanley Buzzelle, US EPA, Andrew Zacker, US HHS

Education Subcommittee Co-Chairs:

Arthur Totten, US EPA, Brian Collins, US DOJ

U.S. Department of Agriculture

Animal Plant Health Inspection Service:

- Wendy Hall wendy.f.hall@aphis.usda.gov
- Eileen Sutker eileen.sutker@aphis.usda.gov
- Michelle Gray michelle.l.gray@aphis.usda.gov
- Fan Wang-Cahill fan.wang-cahill@aphis.usda.gov
- Phillip Washington phillip.washington@aphis.usda.gov
- David Bergsten david.a.bergsten@aphis.usda.gov

Forest Service:

- James Smalls jsmalls@fs.fed.us
- Tasha LoPorto

^{*} Individuals no longer participating on the IWG or NEPA Committee due to retirement or change in duties.

tloporto@fs.fed.us

U.S. Department of Energy

- Denise Freeman denise.freeman@hq.doe.gov
- Eric Cohen* eric.cohen@hq.doe.gov
- Steven Miller steven.miller@hq.doe.gov
- Brian Costner
 brian.costner@hq.doe.gov

U.S. Department of Health and Human Services

- Andrew Zacher,
 Co-Chair, Community of Practice Subcommittee
 andrew.zacher@hhs.gov
- Capt. Edward Pfister *
 edward.pfister@hhs.gov
- Laura Annetta * laura.anetta@hhs.gov

U.S. Department of Homeland Security

- Lisa Quiveors lisa.quiveors@hq.dhs.gov
- Jennifer Hass jennifer.hass@cbp.dhs.gov

•David Reese*
david.reese@hq.dhs.gov

U.S. Department of Housing and Urban Development

• James Potter james.m.potter@hud.gov

U.S. Department of the Interior

Bureau of Land Management:

- Robert Winthrop rwinthro@blm.gov
- Thomas Bartholomew * tbarthol@blm.gov
- Hilary Zarin hzarin@blm.gov

Bureau of Reclamation:

• Cathy Cunningham ccunningham@usbr.gov

Fish and Wildlife Service:

• Iris Ponsano iris_ponsano@fws.gov

National Park Service:

Doug Wetmore doug_wetmore@nps.gov

U.S. Department of Justice

- Cynthia S. Huber cynthia.huber@usdoj.gov
- Brian Collins, Co-Chair, Education Subcommittee brian.m.collins@usadoj.gov
- Barbara Marvin barbara.marvin @usdoj.gov
- Ayako Sato* ayako.sato@usdoj.gov

U.S. Department of State

- Mary Hassell hassellMD@state.gov
- Genevieve Walker* walkerg@state.gov

U.S. Department of Transportation

- Helen Serassio, Co-Chair, NEPA Committee helen.serassio@dot.gov
- Katie Grasty,*

 Co-Chair, Community of Practice Subcommittee katie.grasty@dot.gov

Federal Highway Administration

Harold Peaks harold.peaks@dot.gov

- Carolyn Nelson carolyn.nelson@dot.gov
- Sharlene Reed* sharlene.reed@dot.gov

Federal Transit Administration

- Maya Sarna maya.sarna@dot.gov
- Faith Hall faith.hall@dot.gov

U.S. Environmental Protection Agency

Office of Environmental Justice

- Suzi Ruhl, Co-Chair, NEPA Committee ruhl.suzi@epa.gov
- Stan Buzzelle, *Co-chair, Community of Practice Subcommittee* buzzelle.stanley@epa.gov

Office of Federal Activities

- Arthur Totten, Co-Chair, Education Subcommittee totten.arthur@epa.gov
- Ellen Athas athas.ellen@epa.gov
- Julie Roemele roemele.julie@epa.gov
- Cliff Rader* rader.cliff@epa.gov

Regional Offices

- Grace Musumeci musumeci.grace@epa.gov
- Nikolaus Wirth wirth.nikolaus@epa.gov
- Reggie Harris harris.reggie@epa.gov
- Ntale Kajumba kajumba.ntale@epa.gov
- Alan Walts walts.alan@epa.gov
- Elizabeth Poole poole.elizabeth@epa.gov
- Dana Allen allen.dana@epa.gov
- Thomas Kelly kelly.thomasp@epa.gov

U.S. General Services Administration

- Carol Schafer carol.schafer@gsa.gov
- Katrina Scarpato katrina.scarpato@gsa.gov

U.S. Nuclear Regulatory Commission

- Jeffery Rikhoff jefferey.rikoff@nrc.gov
- Emily Larson*

emily.larson@nrc.gov

U.S. Veterans Administration

• Catherine Johnson catherine.johnson7@va.gov

White House Council on Environmental **Quality**

• Cecilia De Robertis*

(b) (6)

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

Federal agencies should ensure recipients of federal financial assistance engaged in the NEPA process comply with Title VI in addition to fulfilling the requirements of NEPA. A separate Title VI analysis may be necessary. For guidance on Title VI compliance, consult with your Agency's Office of Civil Rights or the Civil Rights Division of the Department of Justice.

Preface

The Federal Interagency Working Group on Environmental Justice (IWG) established the NEPA Committee in 2012 pursuant to the <u>Memorandum of Understanding on Environmental Justice</u> <u>and Executive Order 12898 (2011)</u>. The Memorandum identified the National Environmental Policy Act (NEPA) as an area of focus for inclusion in the agencies' environmental justice efforts and directed efforts to "include interagency collaboration." The NEPA Committee seeks to improve the effective, efficient and consistent consideration of environmental justice issues in the NEPA process through the sharing of best practices, lessons learned, research, analysis, training, consultation, and other experiences of federal NEPA practitioners.

Promising Practices for EJ Methodologies in NEPA Reviews, an IWG Report produced by the NEPA Committee (hereinafter referred to as "Promising Practices Report") represents the professional experience, knowledge, and expertise of the individuals participating in the NEPA Committee. The NEPA Committee (see List of NEPA Committee Participants from 9 Departments and 4 Agencies) spent almost 48 months researching, analyzing and discussing the interaction of environmental justice and NEPA. The Promising Practices Report is a compilation of methodologies gleaned from current agency practices identified by the NEPA Committee concerning the interface of environmental justice considerations through NEPA processes. The IWG and NEPA Committee hope that this compilation will disseminate promising EJ practices across the federal government so that we can learn from one another about effective ways to build robust consideration of environmental justice into our NEPA practice. This document draws from existing environmental justice and NEPA Guidance developed by White House Council on Environmental Quality (CEQ) and federal agencies, but is not and should not be considered formal guidance.

The forward-looking promising practices methodologies are derived from examples of actual agency practices that were presented by one or more agencies during the multi-agency NEPA Committee meetings. These examples were used by the NEPA Committee participants to generate approaches that federal agencies can consider for understanding environmental justice in the context of the NEPA process. For purposes of this document, the NEPA Committee looked at instructive examples from current practice, and where helpful or relevant attempted to extract useful lessons learned from those examples. The NEPA Committee has also produced a National Training Product which will include information on specific examples that align with the *Promising Practices Report* for training purposes.

Accordingly, the *Promising Practices Report* sets forth these promising practices as a way of presenting a variety of methodological approaches and a broad overview of options that may be suitable across various NEPA process scenarios, but not as agency requirements or guidance. Information in the *Promising Practices Report* is intended to provide flexible approaches for agencies as they consider environmental justice in NEPA activities. The *Promising Practices Report* does not establish new requirements for NEPA analysis. It is not and should not be viewed as formal agency guidance, nor is the compilation of promising practices intended to be legally binding or create rights and benefits for any person. It is intended, however, as a way for agencies to compare and improve their methodologies for considering environmental justice now and in the future by applying methods established in federal NEPA practice. In that regard, the joint efforts of the NEPA Committee reflect the community of federal NEPA practitioners who seek to facilitate reasonable consideration of environmental justice within the context of NEPA.

The IWG and NEPA Committee hope that their efforts provide the groundwork for a renewed and dynamic process to advance environmental justice principles through NEPA implementation and thereby promote a more effective, efficient, and consistent consideration of environmental justice during NEPA reviews.

Table of Contents¹

| I. | Meaningful Engagement | 1 |
|-------|---|----|
| II. | Scoping Process | 4 |
| III. | Affected Environment | 6 |
| IV. | Alternatives | 8 |
| V. | Minority Populations | 12 |
| VI. | Low-Income Populations | 17 |
| VII. | Impacts Analysis | 20 |
| VIII. | Disproportionately High and Adverse Impacts | 27 |
| IX. | Mitigation and Monitoring | 35 |
| | National Training Produce: Overview | |

¹Similar to the NEPA process itself, the Report is intended to be non-linear in nature. While each section of the document has been arranged to loosely mirror a linear progression, in actual practice, these steps are often overlapping and interrelated.

I. Meaningful Engagement

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- 1. For purposes of consistency with EO 12898, <u>Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations</u>, the terms "minority populations²" and "low-income populations" are used in this document. Within these populations, there are residents, community leaders, and organizations, among others.
- 2. This document, a compilation of federal NEPA practitioner promising practices, is not formal guidance. It merely provides agencies with recommendations for conducting environmental justice analyses for NEPA reviews. As such, the document is not intended to modify NEPA, the CEQ NEPA regulations, or any agency's NEPA implementation regulations, or impose any requirements beyond what NEPA and EO 12898 require of agencies.
- 3. In order to meaningfully engage minority populations and low-income populations and other interested individuals, communities, and organizations, agencies may consider (as appropriate) encompassing adaptive and innovative approaches to both public outreach (i.e., disseminating relevant information) and participation (i.e., receiving community input) since minority populations and low-income populations often face different and greater barriers to engagement.
- 4. Meaningful engagement efforts with potentially affected minority populations, low-income populations, and other interested individuals, communities, and organizations are generally most effective and beneficial for agencies and communities when initiated early and conducted (as appropriate) throughout each step of the NEPA process.
- Meaningful engagement efforts for potentially affected minority populations, low-income
 populations, and other interested individuals, communities, and organizations can play an
 important role in leveraging agencies' ability to collect data used to inform the decision-

² See "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity" at https://www.whitehouse.gov/omb/fedreg_1997standards/

See also e.g. "U.S. Environmental Protection Agency's "Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples" at

http://www3.epa.gov/environmentaljustice/resources/policy/indigenous/ej-indigenous-policy.pdf

³ Agencies use their discretion to define the range of individuals and/or groups to which they will extend EJ analyses within their NEPA process. This Report recognizes there are a variety of agency approaches to conducting EJ analyses and terminology, and so for consistency, it uses the wording, "minority populations and low-income populations" throughout this document.

making process.

- 6. Maintaining relationships with affected minority populations, low-income populations, and other interested individuals, communities, and organizations throughout the NEPA process via an agency-designated point of contact can be an effective means of facilitating meaningful engagement.
- 7. Convening project-specific community advisory committees and other groups established to identify potential impacts and mitigation measures (as part of the NEPA review process) comprised in part of potentially affected minority populations and low-income populations can enhance agencies' understanding of the proposed action's potential impacts and alternatives, and can be a valuable public participation strategy, designed to further inform an agency's decision-making process.
- 8. Providing minority populations and low-income populations, the public, and other interested individuals, communities, and organizations with an opportunity to discuss the purpose and need statement early in the NEPA process can help focus public input. Explaining the purpose and need for agency action to the minority populations and low income populations early in the NEPA process can help focus meaningful engagement (i.e. public outreach and participation) efforts. (See also IV. GP1,SS1)

Specific Steps

As appropriate, agencies can consider the following actions:

- 1. Consider conducting early and diligent efforts to meaningfully engage potentially affected minority populations, low-income populations, and other interested individuals, communities, and organizations (as appropriate) when: 1) defining the affected environment; 2) identifying potentially affected minority and low-income populations; 3) assessing potential impacts to minority and low-income populations; 4) assessing potential alternatives; 5) determining whether potential impacts to minority populations and low-income populations are disproportionately high and adverse (See Section VIII); and 6) developing mitigation and monitoring measures. Engaging the community during appropriate key steps in the NEPA review can inform an agency's decision-making process. Agencies may benefit by communicating agency objectives for the proposed activity.
- 2. Consider identifying and addressing (as appropriate) concerns such as any cultural, institutional, geographic, economic, historical, linguistic, or other barriers to achieve meaningful engagement with potentially affected minority populations, low-income populations, and other interested individuals, communities, and organizations.

- 3. Agencies can be informed by soliciting and considering input on the proposed action and alternatives (as appropriate) from each segment of the minority population or low-income population that may potentially be affected (e.g., minority-owned small businesses, low-income transit riders, subsistence fishers).
- 4. Consistent with applicable requirements, agencies should conduct meaningful engagement efforts and government-to-government consultation efforts (as appropriate) specifically designed to reach indigenous tribal populations and organizations.
- 5. Throughout each step of the NEPA process (as appropriate) consider the use of electronic communications (e.g., virtual meetings, webinars, social media, Listservs). This method of communication may not be effective for some populations, and its use could be discussed in conjunction with other methods of communication that are viable. Throughout each step of the NEPA process (as appropriate) consider choosing meeting locations, meeting times, and facilities that are local, convenient, and accessible to potentially affected minority populations and low-income populations, and other interested individuals, communities, and organizations, which includes holding some meetings outside of traditional work hours and locations.
- 6. Consistent with applicable requirements, agencies should prepare NEPA documents in plain, clear language and provide multiple forms of communication (e.g., written, oral, pictorial) to accommodate varied levels of reading proficiency, to facilitate meaningful engagement, and to account for limited English proficiency (LEP). Also, consider (as appropriate) providing interpretation and translation services at public meetings.
- 7. Consider documenting and explaining the steps taken throughout the NEPA process (as appropriate) for agencies' public outreach and public participation actions or decisions (e.g., how minority populations and low-income populations were identified and how barriers to involvement were identified and addressed). Providing these explanations can be helpful to both an agency's decision-making process and the community's understanding of the NEPA process.
- 8. Consider providing notice to the public (as appropriate) of the meeting date(s) and time(s) well in advance and through methods of communication suitable for minority and low-income populations (including LEP populations) to accommodate the schedules of minority populations and low-income populations, and other interested individuals, communities, and organizations. By considering mandatory minimum time requirements between advance notification and meetings that may exist (e.g. time requirements for tribal consultations) an agency can more effectively establish

II. Scoping Process

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- 1. A broad cross-media perspective of affected resource topics analyzed in the NEPA document (e.g., water resources, land use, air quality) during scoping may help ensure potential human health and environmental effects on minority populations and low-income populations are considered within the scope of the NEPA review. Agencies can be informed by an understanding that minority populations and low-income populations may have increased or unique vulnerabilities from multiple impacts in one or more environmental resource topics or from cumulative impacts, and that the extent of the affected environment may vary for each resource topic addressed in the NEPA document.⁴
- 2. Agencies may wish to conduct several small scoping meetings for minority populations and low-income populations to foster more participation and substantive discussions (e.g., community members may feel intimidated by large public meetings and formal discussions). If more than 15-20 people are in attendance, breaking into discussion groups may improve the effectiveness of the meeting.
- 3. Prior to the scoping process, it may be beneficial for agencies to develop a written strategy to identify, notify, and solicit input from potentially affected minority populations and low-income populations for agencies to consider in determining the scope of the NEPA review; self-identified minority populations and low-income populations can be included in this process.
- 4. Due to the broad nature of programmatic assessments, certain site-specific EJ methodologies described within this section may not be directly applicable. For some programmatic assessments, the scope may be regional or national.

Specific Steps

⁴ See US EPA, <u>Factors for Identifying and Addressing Disproportionate Environmental Health Impacts (2007)</u>; <u>Supplement to American Journal of Public Health</u>, Vol. 101, No. S1 (Dec 2011).

As appropriate, agencies can consider the following actions:

- 1. Consider conducting a preliminary screening analysis at the beginning of the scoping process to determine whether minority populations and low-income populations may be present and could be affected by the proposed action. A web-based Geographic Information System tool (e.g., EJSCREEN) can be used to help identify the location and concentrations of minority populations and low-income populations.
- 2. If the preliminary screening process identifies a potentially affected minority population or low-income population, agencies may benefit by conducting the remainder of the scoping process in consideration of the potential unique characteristics and vulnerabilities of the minority populations and low-income populations.
- 3. To develop an effective public participation process, agencies can be informed by contacting local community leaders in the potentially affected minority populations and low-income populations (as appropriate). This can help determine the number of public and individual meetings to be scheduled throughout the NEPA process.
- 4. When federally-recognized tribes are potentially affected by the proposed action, consider seeking government-to-government consultation (as appropriate) with tribal representatives, leaders, or officials, and offer appropriate opportunities for tribal participation (e.g., as a cooperating agency or consulting party).
- 5. Consider using media suitable to reach potentially affected minority populations and low-income populations (e.g., local newspapers and radio programs word of mouth, churches, civic centers, and other places where people gather in the community) to provide notification about an agency's proposed action and the scoping process (as appropriate).
- 6. Consider (as appropriate) specifically inviting potentially affected minority populations and low-income populations when conducting public scoping meetings.⁵ In some cases it may be useful for agencies to use a neutral third-party (e.g., convener, facilitator, and mediator) familiar with EJ issues and with the particular community that is potentially affected by the proposed action. It may also be appropriate to provide an interpreter for public meetings when LEP communities may be affected.
- 7. Consider conferring with minority populations and low-income populations, and other interested individuals, communities, and organizations (as appropriate) to gather any relevant data on the current and past conditions (e.g., ecological, aesthetic, historic, cultural, economic, social, or health) of the potentially affected

⁵When convening groups, agencies should note the potential applicability of the Federal Advisory Committee Act (FACA) of 1972 (PL92-463).

- minority populations and low-income populations, in order to inform the NEPA review.
- 8. Agencies may wish to consider ensuring that agency records clearly reflect the rationale for any scoping determinations made concerning minority populations and low-income populations (e.g., alternatives development, mitigation measures).
- 9. Consider circulating (as appropriate) a post-scoping summary report/document to potentially-affected minority populations and low-income populations, informing them of the input received and outcomes of the scoping process. Keeping the community informed may assist agencies in receiving meaningful engagement from the community during later stages of the NEPA process.
- 10. Regardless of the thoroughness of the scoping efforts, if new and significant information that potentially affect minority populations and low-income populations arise later in the NEPA process, in accordance with CEQ regulations (40 CFR 1501.7(c)), agencies should consider modifications to the proposed action, alternatives or potential mitigation measures. As appropriate, agencies may benefit by assessing consistency of the proposed modifications with the purpose and need.

III. Defining the Affected Environment

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- 1. Consistent with 40 CFR 1502.15, as agencies describe the environment of the area(s) to be affected or created by the alternatives under consideration, they can benefit from an understanding of community and population characteristics, location, conditions and other relevant information. One of the important functions of defining the affected environment is to help agencies determine the outer boundaries (i.e., footprint) of each potentially impacted resource topic analyzed in the NEPA document. These boundaries help define the affected area within which potentially impacted minority populations and low-income populations will be considered during the NEPA review. The geographic extent of the affected environment may vary for each resource topic analyzed in the NEPA document.
- 2. Data (including input from minority populations, low-income populations, and other interested individuals, communities, and organizations) on ecological, aesthetic, historic, cultural, economic, social, or health conditions of minority populations and low-income populations within the affected environment can provide agencies with useful insight into

- how the community's conditions, characteristics, and/or location can influence the extent of the affected environment. See also Section II, GP 1.
- 3. After considering unique conditions (e.g., ecological, aesthetic, historic, cultural, economic, social, or health) of the potentially affected minority populations and low-income populations, Agencies may wish to consider that the extent of the affected environment maybe larger (or smaller) and differently shaped than the boundaries would have been drawn without the existence of those conditions. The affected environment may also not be contiguous. See also Section V.
- 4. When determining whether a potentially affected minority population or low-income population influences the extent of the affected environment, agencies can be informed by considering the proposed action's: 1) exposure pathways (routes by which the minority or low-income population may come into contact with chemical, biological, physical, or radiological effects); 2) ecological, aesthetic, historic, cultural, economic, social, or health consequences to the community; and 3) distribution of adverse and beneficial impacts from the proposed action. See also Section V.
- 5. Agencies may wish to create a map to delineate the affected environment. A visual depiction of the affected environment may be beneficial to an agency's decision-making process, meaningful engagement efforts, and to the community's understanding of the proposed federal action. See also Section II.

Specific Steps

As appropriate, agencies can consider the following actions:

- 1. In order to provide a useful comparative context for the consideration of impacts to minority populations and low-income populations, when developing the baseline characterization of the affected environment agencies can be informed by considering for each resource topic in the NEPA document: 1) exposure pathways; 2) direct, indirect and cumulative ecological, aesthetic, historic, cultural, economic, social, or health impacts; and 3) distribution of any potential beneficial or adverse impacts.

 Agencies may also be informed by consideration of multiple exposures. See Section VII, GP 11.
- 2. Agencies may wish to consider collecting data and information relevant to the three community considerations in Step One (exposure pathways, related impacts, and beneficial impacts distribution) for minority populations and low-income populations within the boundaries of the baseline characterization. Include data related to reasonably foreseeable direct, indirect, and cumulative adverse and beneficial impacts from the proposed federal action on the community. Agencies may also be informed by consideration of multiple exposures. (See Section VII, GP 11).

- 3. Agencies may wish to consider data and information from a variety of sources, including, but not limited to:1) community residents and other interested individuals and organizations; 2) data sets from federal, state, local and tribal governments; 3) peer-reviewed and other scientific literature; and 4) articles in industry and professional journals, popular press, websites, etc.
- 4. Agencies may wish to consider identifying and describing any unique conditions of the potentially affected minority populations and low-income populations that may be affected by the proposed action, based on data and information collected in Specific Step Two above. Unique conditions may include, but are not limited to: 1) human health vulnerabilities (e.g., heightened disease susceptibility, health disparities); 2) socioeconomic vulnerabilities (e.g., reliance on a particular resource that may be affected by the proposed action, disruptions to community mobility and access as a result of infrastructure development); and 3) cultural vulnerabilities (e.g., traditional cultural properties and ceremonies, fish consumption practices).
- 5. Agencies may wish to consider the need to revise the initial baseline characterization (from Step One) of the affected environment, including revisions to the outer boundaries and pockets of minority populations and low-income populations (as appropriate) using information obtained from Specific Steps Two through Four. Be mindful that data may suggest the outer boundaries of the affected environment and/or pockets of minority populations and low-income populations may require adjustment.
- 6. Consider documenting agencies' characterizations of the affected environment in plain language that is easily understood by the general public and the potentially affected minority populations and low-income populations.
- 7. Consider providing written explanation in the records for agencies' chosen methods and data used to characterize the affected environment (See, e.g., 40 CFR §1502.24).

IV. Developing and Selecting Alternatives

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

1. Providing minority populations and low-income populations with a purpose and need statement early in the NEPA process can help focus public input regarding appropriate reasonable alternatives. Reexamination of the potential alternatives in light of relevant public input will, in turn, assist agencies in identifying the range of reasonable alternatives, including a preferred alternative that meets the purpose and need, while addressing concerns of the community. (See also Section 1, GP 8).

- 2. Agencies can be informed when reasonable alternatives reflect (as appropriate) a comparable level of detail concerning issues affecting minority populations and low-income populations. If reasonable alternatives have substantial differences in the level of detail of available information concerning impacts to minority populations and low-income populations, agencies may wish to consider generating comparable information about impacts or mitigation to make the comparisons relevant to one another.
- 3. As agencies explore the range of reasonable alternatives, agencies may consider (as appropriate) whether structuring alternatives to allow a decision to be based on an alternative developed from a combination of elements from multiple alternatives might be appropriate to address impacts to minority populations and low-income populations. Agencies may consider stating in the NEPA document that an alternative developed from the elements of the other alternatives may be considered. In this case, the alternatives may be structured to enable comparison of key elements across the alternatives (e.g., a modular analytic approach) (See, e.g., 40 CFR §1502.14(a)).
- 4. Providing a discussion of how and why the reasonable alternatives were developed and explaining why additional alternatives supported or proposed by the minority populations and low-income populations may have been eliminated from detailed study can assist agencies with managing potential public confusion or opposition (See, e.g., 40 CFR §1502.14).
- 5. Agencies can benefit by meaningfully engaging minority populations and low-income populations to provide input on the range and design of potential reasonable alternatives and the purpose and need statement while still under development, or as early as possible in the NEPA process, as well as encouraging communities to propose their own alternatives. Agencies can advance community engagement by means such as community advisory committees, public workshops, and individual and community-wide meetings.⁶
- 6. The identification of a disproportionately high and adverse impact to a minority population or low-income population can heighten agencies' attention to identifying reasonable alternatives that could mitigate the adverse impact, and using community input into agencies' development of mitigation measures.

Specific Steps

As appropriate, agencies can consider the following actions:

⁶ When convening groups, Agencies should consider the potential applicability of the Federal Advisory Committee Act (FACA) of 1972 (PL92-463).

- 1. Consistent with applicable requirements provide minority populations and low-income populations with an opportunity to provide input during agencies' development of the purpose and need statement and proposed alternatives, as well as reviewing and commenting on the draft purpose and need statement and the proposed alternatives during scoping.
- 2. Consistent with applicable requirements, agencies should consider any relevant public comments regarding the identification of reasonable alternatives.
- 3. Consistent with applicable requirements, agencies should consider whether the proposed alternatives avoid and/or mitigate impacts to minority populations and low-income populations. As appropriate, agencies may wish to consider distribution of benefits to minority populations and low-income populations.
- 4. Consider documenting the rationale used for selecting and eliminating alternatives from detailed study, including those additional alternatives supported or proposed by the minority populations and low-income populations.
- 5. When minority populations and low-income populations would be affected by the proposed action, agencies may wish to consider the following types of mitigation for selecting reasonable alternatives (as appropriate):
 - identify alternate locations or sites
 - alter the timing of activities to account for seasonal dependencies on natural and human resources
 - incorporate pollution prevention practices and policies to reduce the size or intensity of an action or its impacts
 - include additional benefits to the community
 - incorporate other measures proposed by the community, including changing specific aspects of the project
 - do not implement the proposed action or action alternative.

Proper documentation for the chosen type of mitigation should be provided in the NEPA document.

- 6. Agencies may wish to consider identifying any alternatives that would result in a disproportionately high and adverse impact to minority populations and low-income populations.
- 7. Agencies may wish to consider which alternative(s) have the least adverse impact to minority populations and low-income populations and alternatives that would minimize or mitigate disproportionately high and adverse impacts as a factor when identifying reasonable alternatives and the preferred alternative.
- 8. Consider documenting any steps that may have been taken by agencies to receive community input during the development of: 1) the purpose and need statement; 2) reasonable

alternatives; and 3) identification of a preferred alternative.

V. <u>Identifying Minority Populations</u>

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- 1. In general, minority populations are identified based on the "affected environment." See Section III. Minority populations may consist of groups of culturally different subpopulations with potentially different impacts and outreach needs. Minority populations may be dispersed throughout the study area, but have significant numbers.
- 2. Minority populations may reside in tightly clustered communities, or be evenly or unevenly distributed throughout the general population. Selecting a geographic unit of analysis (e.g., county, state, or region) without sufficient justification may portray minority population percentages inaccurately by artificially diluting their representation within the selected unit of analysis.
- 3. To sufficiently identify small concentrations (i.e., pockets) of minority populations, agencies may wish to supplement Census data⁷ with local demographic data. Local demographic data and information (including data provided by the community and Tribes) can improve an agency's decision-making process. Anecdotal data should be validated for accuracy whenever possible. Agencies should disclose, as appropriate, when anecdotal data has not been validated.
- 4. When conducting the *Meaningfully Greater* analysis⁸ (described below) agencies can benefit by being sensitive to situations where a large percentage of the residents is comprised of minority individuals. In selecting the appropriate reference community, it is important to capture relevant demographic information. A larger scale reference community (e.g., municipal, state, regional) may be required under this circumstance to obtain results that accurately reflect the existence of a minority population in the geographic unit of analysis (e.g., census block) being analyzed.

⁷ Some populations may not be fully accounted for in Census data. As appropriate, agencies can consider using local sources of data (including data provided by the community and Tribes) to conduct *the No Threshold* analysis.

⁸Meaningfully greater is a term used in "Appendix A, Text of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Annotated with Proposed Guidance on Terms" which is attached to CEQ's Environmental Justice Guidance Under the National Environmental Policy Act (1997).

- 5. The *Fifty Percent* analysis ⁹(described below) can be conducted to initially identify the extent to which minority populations reside within the affected environment. An aggregate of minority populations over 50% for the entire affected environment indicates increased scrutiny in the EJ analysis may be appropriate (e.g. to assess majority minority populations). Agencies may wish to conduct the *Meaningfully Greater* analysis, regardless of the results from the *Fifty Percent* analysis.
- 6. The use of thresholds to identify minority populations is an established method but may not always capture relevant demographic information. Regarding the identification of minority populations, population size is a factor considered in the 50% analysis and Meaningfully Greater analysis. The No-Threshold analysis (described below) attempts to identify all minority populations regardless of population size. Either the No-Threshold analysis alone, or conducting both the Fifty Percent and Meaningfully Greater analyses together can be used to identify minority populations prior to the determination of disproportionately high and adverse impacts.
- 7. The *Fifty Percent* analysis plays an important role in identifying minority populations when a large percentage of the population in the geographic unit of analysis or reference community is comprised of minority individuals. Under these circumstances, the *Fifty Percent* analysis can function as a direct measure, to ensure that when minority individuals comprise a majority of an appropriate geographic unit of analysis (e.g., block group ¹⁰) a minority population is identified, regardless of whether the *Meaningfully Greater* analysis has a similar outcome.
- 8. When either the *No-Threshold* analysis has been conducted, or when the *Fifty Percennt* analysis and *Meaningfully Greater* analysis have been conducted, and the applicable analysis has documented a majority minority population (i.e., where a majority of the population in the affected environment is comprised of minorities) special emphasis should (as appropriate) be placed on identification of impacts. Due to the larger number of identified minority populations in these circumstances, agencies can benefit from focusing attention and available agency resources (e.g., outreach activities and impacts analyses) on minority populations that are potentially disproportionately impacted by the proposed action (e.g., see the factors listed in Disproportionately High and Adverse Impacts Section).

⁹50% is a term used in "Appendix A, Text of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Annotated with Proposed Guidance on Terms" which is attached to CEQ's *Environmental Justice Guidance Under the National Environmental Policy Act* (1997).

¹⁰ Census <u>Block Groups</u> are statistical divisions of census tracts, are generally defined to contain between 600 and 3,000 people, and are used to present data and control block numbering. A block group consists of clusters of blocks within the same census tract that have the same first digit of their four-digit census block number.

9. Agencies can be informed by determining if any minority or low-income transient or geographically dispersed populations (e.g. Native Americans, migrant farm workers) reside seasonally within the affected area or may otherwise be affected (e.g. may reside elsewhere but come within the affected area for subsistence fishing or to collect traditional medicines) by consulting sources such as: 1) the US Department of Agriculture 2012Census of Agriculture, Table 7: Hired Farm Labor Less than 150 Days and Migrant Farm Labor on Farms with Hired Labor; and 2) community members and other interested individuals or organizations, or other appropriate sources.

Specific Steps

As appropriate, agencies can consider the following actions:

The identification of minority populations can be accomplished in various ways. These ways, discussed in the following Specific Steps, include but are not limited to: A) the *No Threshold* analysis; or B) both the *Fifty Percent* analysis and the *Meaningfully Greater* analyses in concert.

A reference community is helpful for context and for future disproportionate effects analysis. A reference community's total number of minority individuals and percent minority can be compared to the population in the affected environment or geographic unit of analysis. Agencies may wish to clearly articulate the basis for the selection of a reference community.

A) To conduct the *No-Threshold* analysis:

- 1. Select an appropriate geographic unit of analysis (e.g., census block, block group). 11
- 2. Determine the total number of minority individuals (all individuals other than non-Hispanic whites) and the percent minority for each geographic unit of analysis within the affected environment.
- 3. Identify the existence of a minority population for each geographic unit of analysis in which Step 2 (above) indicates a minority percentage.
- 4. Display the minority populations in map and table format by geographic unit of analysis, as appropriate.

¹¹Census Blocks are the smallest geographic areas that the Census Bureau uses to tabulate decennial data. Blocks are statistical areas bounded by visible features, such as streets, roads, streams, and railroad tracks, and by nonvisible boundaries, such as selected property lines and city, township, school district, and county limits. Block Groups are statistical divisions of census tracts, are generally defined to contain between 600 and 3,000 people, and are used to present data and control block numbering. A block group consists of clusters of blocks within the same census tract that have the same first digit of their four-digit census block number.

5. Provide a written rationale which explains the selection of the geographic unit of analysis, the reference community, and other methods used to identify minority populations.

-OR-

B) To conduct both the *Fifty Percent* analysis and the *Meaningfully Greater* analyses in concert:

(i) Conducting the Fifty Percent analysis

- 1. Determine the total number of individuals residing within the affected environment.
- 2. Determine the total number of minority individuals (all individuals other than non-Hispanic whites) residing within the affected environment.
- 3. Select the appropriate geographic unit of analysis within the affected environment (e.g., census block, block group).
- 4. Determine the percentage of minority individuals (including Hispanics) residing within the geographic unit of analysis.
- 5. If the percentage of minorities residing within the geographic unit of analysis meets or exceeds 50%, note the existence of a minority population.
- 6. Next, compare the total number of minorities residing within the affected environment against the total number of individuals residing within the affected environment, in order to determine the percentage of minority individuals residing within the affected environment.
- 7. If the percentage of minorities residing in the affected environment exceeds 50%, consider noting the need for a heightened focus throughout the entire EJ analysis.
- 8. After completion of the *Fifty Percent* analysis, conduct the *Meaningfully Greater* analysis.

(ii) Conducting the Meaningfully Greater analysis

- 1. Select the appropriate geographic unit of analysis for the affected environment (e.g., census block, block group).
- 2. Select the appropriate reference community (e.g., county, state).

- 3. Select the appropriate meaningfully greater threshold for comparison. The *Meaningfully Greater* analysis requires use of a reasonable, subjective threshold ¹² (e.g., 10% or 20% greater than the reference community). What constitutes 'meaningfully greater' varies by agency, with some agencies considering any percentage in the selected geographic unit of analysis that is greater than the percentage in the appropriate reference community to qualify as being meaningfully greater.
- 4. Compare the percentage of minority individuals residing within the selected geographic units of analysis to the percentage of minority individuals residing within the reference community.
- 5. If the percentage of minorities residing within the geographic unit of analysis is meaningfully greater (based on application of the threshold) either individually or in the aggregate, than the percentage of minorities residing within the reference community, disclose the existence of a minority population.
- 6. Display identified minority populations in a map and table format, as appropriate. Care should be taken to present accurate and current data and information, and explain the limitations of the data and information.
- 7. Provide a written rationale which explains the selection of the geographic unit of analysis, the reference community, the meaningfully greater threshold, and other methods used to identify minority populations.

¹² To calculate benchmark values, some Agencies use a percent of the absolute number rather than adding a subjective threshold present. This is especially important when the percent of the minority population is small.

VI. Identifying Low-Income Populations

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- 1. When identifying low-income populations, it may be useful for agencies to consider the publication date for poverty data that is used in the Census Bureau's poverty thresholds and the U.S. Department of Health and Human Services' poverty guidelines or other agency-specific poverty guidelines. Using the most current poverty data is preferable but agencies should also consider whether there are differences in the dates for local, state and national data.
- 2. Agencies may wish to refine low-income status determinations, whenever possible. Use of local data sources on poverty may be more current than the Census Bureau's American Community Survey or other periodically-collected data sources.
- 3. There are several ways to assess low-income thresholds, such as identifying the proportion of individuals below the poverty level, households below the poverty level, and families with children below the poverty level. It may be reasonable to assess low-income thresholds in more than one way to be more inclusive.
- 4. Low-income populations may reside in tightly clustered communities, rather than being evenly distributed throughout the general population. Selecting a geographic unit of analysis (e.g., county, state, or region) without sufficient justification may portray low income population percentages inaccurately by artificially diluting their representation within the selected unit of analysis.
- 5. Low-income status need not always be capped at the poverty level. In some instances, it may be appropriate for agencies to select a threshold for identifying low-income populations that exceeds the poverty level.

Specific Steps

As appropriate, agencies can consider the following actions:

The identification of low-income populations can be accomplished in various ways, including by conducting either: A) the *Alternative Criteria* analysis; or B) the Low-*Income Threshold Criteria* analysis.

While not required for the Alternative Criteria analysis, a reference community can be helpful by providing context and for future disproportionate effects analysis. Agencies may wish to clearly articulate the basis for the selection of a reference community for either the Alternative Criteria analysis or the Low-Income Threshold Criteria analysis.

A. Conducting the Alternative Criteria analysis:

- 1. Select and disclose the appropriate poverty thresholds as defined by the Census Bureau, the poverty guidelines as defined by the Department of Health and Human Services, or other appropriate source (e.g., federal program eligibility standards).
- 2. Select an appropriate geographic unit of analysis (e.g. block group, census tract) for identifying low-income populations in the affected environment.
- 3. Select an appropriate threshold for determining whether a particular geographic unit of analysis is identified as a low-income population. (See Guiding Principle 5).
- 4. Determine the total number of low-income individuals (or households) and the percent 'low-income for each geographic unit of analysis within the affected environment.
- 5. Identify the existence of a low-income population for each geographic unit of analysis in which Step 4 (above) indicates a low-income percentage at or above the selected Census Bureau poverty threshold or the Department of Health and Human Services poverty guidelines, or other appropriate alternate source.
- 6. Display the low-income populations in map and table format by geographic unit of analysis, as appropriate.

B. Conducting the Low-Income Threshold Criteria analysis:

- 1. Select and disclose the appropriate poverty thresholds as defined by the Census Bureau, the poverty guidelines as defined by the Department of Health and Human Services, or other appropriate source (e.g., federal program eligibility standards).
- 2. Select an appropriate geographic unit of analysis (e.g., block group, census tract) for identifying low-income populations in the affected environment.
- 3. Select the appropriate reference community (e.g., county, state) to compare against the geographic units of analysis.
- 4. Select an appropriate measure(s) (such as individuals below the poverty level, median household income, or families below the poverty level) for comparing the poverty level

- in the geographic unit of analysis to the reference community.
- 5. Select an appropriate threshold for determining whether a particular geographic unit of analysis is identified as low-income. (See Guiding Principle 5).
- 6. Determine the percentage of individuals (or households) at or below the selected low-income threshold for the reference community and in each geographic unit of analysis.
- 7. Compare the percentage (from Step 6 above) in each geographic unit of analysis to the percentage in the reference community.
- 8. If the percentage in the geographic unit of analysis is equal to or greater than that of the reference community, disclose the existence of a low-income population.
- 9. Display in the NEPA document low-income populations identified within the affected environment in a meaningful way, such as a map, table, pie-chart, etc. (as appropriate).
- 10. Provide a written rationale in the NEPA document which explains the selection of data sources and other methods that were used to identify low-income populations regardless of whether the *Alternative Criteria* analysis or *Low-Income Threshold Criteria* analysis was done. If some data sources were preferentially used over others, provide rationale supporting their selection.

VII. Impacts

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- When analyzing the proposed action, it is important to recognize the relationship between
 potential impacts and potential exposures, as these terms are not synonymous. An impact
 is the adverse or beneficial result of exposure or other environmental consequences of the
 proposed action.
- 2. Impacts from the proposed action to minority populations and low-income populations in the affected environment may be either adverse or beneficial. The specific conditions and characteristics of the affected community including differences among minority subpopulations can inform whether the impact is beneficial or adverse. It is important to realize that what is considered a beneficial impact to some communities may be considered an adverse impact to others.
- 3. Potential direct, indirect, and cumulative impacts on minority populations and low-income populations in the affected environment include both human health and environmental impacts from an agency's programs, policies, or activities. Potential environmental impacts encompass both the natural and physical environment and can include ecological, aesthetic, historic, cultural, economic, social, or health ¹³ impacts to minority populations and low-income populations in the affected environment.
- 4. Background data on minority populations and low-income populations in the affected environment can enhance an agency's understanding of the nature and severity of potential impacts, which in turn informs an agency's decision-making process. Sources of data include, but are not limited to, national data sets (e.g., U.S. Census, National Vital Statistics System, National Birth Defect Registry, Area Health Resources Files, and National Registry for Historic Places) and state and local data sets (e.g., State Cancer Registries, State Register of Cultural Properties). In addition, empirical data, based on verifiable observations or experience, can also be used for the analysis.
- 5. In accordance with applicable regulations, Federal agencies may wish to consider identifying the presence of transient and/or geographically dispersed populations and whether there is a potential for any unique or amplified impacts to these populations. Native Americans, farm workers, and other transient laborer and/or geographically

¹³ Ecological, aesthetic, historic, cultural, economic, social or health impacts are delineated as effects in 40 CFR § 1508.8 and in Appendix A, "Text of Executive Order 12898, 'Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,' Annotated with Proposed Guidance on Terms" which is attached to CEQ's Environmental Justice Guidance Under the National Environmental Policy Act (1997).

dispersed populations are potentially more susceptible to environmental and health impacts. Reasons for this may include: 1) prolonged exposure to the natural environment with potential exposure to environmental hazards; 2) limited access to health care providers; 3) generally lower level of education; or 4) propensity for limited English proficiency.

- 6. As appropriate, Health Impact Assessments (HIAs), Social Impact Assessments (SIAs), and social determinants of health (consideration of economic and social conditions influencing human health) can provide agencies with important background data. Agencies may consider reaching out to entities both inside and outside the Federal government to seek their help in preparing HIAs, SIAs, and considering the social determinants of health, as either part of or an addendum to the NEPA document.
- 7. Minority populations and low-income populations in the affected environment may hold an opposing technical or scientific view (which can be based on several sources, including the community) from agencies regarding specific impacts and/or methods of analysis. Responsible opposing views from minority populations and low-income populations in the affected environment, including views regarding an impact's status as disproportionately high and adverse, may warrant discussion in a NEPA document. In instances of a Final Environmental Impact Statement, NEPA requires that agencies must discuss any responsible opposing view raised by the community which was not adequately discussed in the draft statement and indicate the agency's response to the issues raised (see, e.g., 40 CFR §1502.9(b)).
- 8. NEPA requires agencies to consider three types of effects or impacts: (1) direct effects, which are caused by the action and occur at the same time and place; (2) indirect effects, caused the action and are later in time or farther removed in distance, but are still reasonably foreseeable; and (3) cumulative impacts, the impacts on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. When assessing cumulative impacts, agencies may wish to (as appropriate):
 - be mindful that minority populations and low-income populations in the affected environment may be differently affected by past, present, or reasonably foreseeable future impacts than the general population; and
 - in some circumstances, consider (among other existing conditions) chemical and nonchemical stressors that could potentially amplify impacts from the proposed action to the
 health of minority populations and low-income populations in the affected environment.
 Non-chemical stressors can include current health status (e.g. pre-existing health
 conditions) and past exposure histories, and social factors such as community property
 values, sources of income, level of income, and standard of living.

- 9. Consistent with applicable requirements, agencies should consider, when a proposed action that may fall within a categorical exclusion (CE) involves impacts to minority populations and low-income populations in the affected environment, whether any extraordinary circumstances are applicable. Extraordinary circumstances are unique situations that may result in potential impacts beyond those generally arising from actions subject to the CE. Agencies have developed their own definitions of the type of circumstances that may constitute extraordinary circumstances, and those regulations should be consulted. Before determining that a proposed action can be categorically excluded, it must be determined whether extraordinary circumstances may exist (see, e.g. 40 CFR §1508.4) If a proposed action that otherwise would be categorically excluded could potentially have a disproportionately high and adverse impact on minority populations and low-income populations in the affected environment, this could contribute to finding an extraordinary circumstance requiring the project undergo further analysis in an Environmental Assessment or EIS, as appropriate.
- 10. According to the Intergovernmental Panel on Climate Change (IPCC) "[c]limate-related hazards exacerbate other stressors, often with negative outcomes for livelihoods, especially for people living in poverty... Climate-related hazards affect poor people's lives directly through impacts on livelihoods, reductions in crop yields, or destruction of homes and indirectly through, for example, increased food prices and food insecurity" (IPCC, Climate Change 2014). Agencies may wish to consider how impacts from the proposed action could potentially amplify climate change-related hazards (e.g. storm surge, heat waves, drought, flooding, and sea level change) in minority populations and low-income populations in the affected environment, and vice versa. Agencies may benefit by considering climate resilience in the proposal's design and alternatives.
- 11. In some circumstances, agencies may consider cumulative impacts that may result from chemical and non-chemical stressors, exposures from multiple routes or sources, and factors that differentially affect exposure or toxicity to communities.
 - The cumulative ecological, aesthetic, historic, cultural, economic, social, or health effects of the proposed action can arise from and also include *non-chemical stressors*.
 - Communities can experience cumulative impacts to one or more chemical, biological, physical, or radiological contaminants across environmental media (e.g., air, water, soil, land use) from single or multiple sources, over time in one or more locations.
 - Communities can experience multiple exposures from any combination of direct, indirect, or cumulative impacts to two or more chemical, biological, physical, or radiological contaminants from single or multiple sources.

12. As with any resource area, whether environmental justice is being addressed within each individual resource section of the NEPA document or it is addressed in a single section of the NEPA document, agencies can benefit from a transparent presentation of environmental justice issues. Agencies may wish to consider including in the Introduction, Overview, and/or Executive Summary section of the NEPA document a brief discussion and/or table presenting a summary of the environmental justice impacts discussed in greater detail within the document. This discussion may consider providing environmental justice information, such as general findings and conclusions to make the information readily accessible for agency decision-making and to facilitate public use. Agencies may note in the table of contents all areas where environmental justice is discussed.

Significance

- 1. Pursuant to NEPA, the human environment includes both the natural and physical (e.g., built) environment and the relationship of people with that environment. Significant impacts to the human environment (including minority populations and low-income populations) can result from ecological, aesthetic, historic, cultural, economic, social, or health impacts. However, economic or social impacts are not considered significant unless they are interrelated with natural or physical environmental impacts.
- 2. Executive Order 12898 does not change the legal thresholds for NEPA, including whether a Categorical Exclusion, Environmental Assessment, or an EIS should be prepared.
- 3. A disproportionately high and adverse impact to minority populations and low-income populations can occur at any level of NEPA review. In some circumstances, an agency may determine that impacts are disproportionately high and adverse, but not significant within the meaning of NEPA. In other circumstances, an agency may determine that an impact is both disproportionately high and adverse and significant within the meaning of NEPA.
- 4. In general, pursuant to NEPA, determining whether an impact is significant requires consideration of both context (i.e., society as a whole, the affected region, the affected interests, and the locality) and intensity (i.e., the severity of the impact) (see 40 CFR §1508.27(a)-(b)). The impacts of a proposed action on minority populations and low-income populations should inform the determination of whether impacts are significant.
- 5. An assessment of an impact's significance to the general population without consideration of the impact to minority populations and low-income populations in the affected environment may not be adequate. An agency's consideration of impacts to minority populations and low-income populations helps ensure that significant impacts are identified.
- 6. EO 12898 instructs agencies to determine whether impacts are disproportionately high

and adverse to minority populations and low income populations but EO 12898 does not address significance. Agencies may choose to consider determining whether an impact is significant prior to analyzing whether the impact is disproportionately high and adverse, since significance may be a factor for consideration in an agency's disproportionately high and adverse determination. ¹⁴ To the extent agencies seek additional guidance on how to analyze significance, see CEQ NEPA regulation on significance at 40 CFR 1508.27 and additional Guiding Principles and Specific Steps in Section VII.

- 7. Determining whether an impact is significant to minority populations and low-income populations in the affected environment involves focusing the analysis on aspects of context and intensity most relevant to the impacted community. In general, this entails focusing on various factors related to an impact's severity (discussed in 40 CFR §1508.27(b)) as they pertain to the community's affected interests and locality (context).
- 8. The degree to which an impact involves unique or unknown risks (see 40 CFR §1508.27(b)(5)) to minority populations and low-income populations in the affected environment can inform how agencies assesses the significance of the impact. Minority populations and low-income populations could be uniquely susceptible to impacts from a proposed action due to: 1) special vulnerabilities, e.g. pre-existing health conditions that exceed norms among the general population; 2) unique routes of exposure, e.g. use of surface or well water in rural communities; or 3) cultural practices, e.g. subsistence fishing, hunting or gathering, access to sacred sites.
- 9. When both positive and adverse impacts have been identified, a significant impact may exist even if an agency believes that on balance the effect will be beneficial (see 40 CFR§1508.27(b)(1)). While an action may result in an overall potentially beneficial impact to the general population, the impact may still present an adverse impact to minority populations and low-income populations in the affected environment.
- 10. Additional factors related to an impact's intensity (discussed in 40 CFR §1508.27(b)) that could lead to a finding of significance to minority populations and low-income populations in the affected environment, despite having no significant impact to the general population include: 1) the health and safety of the community; 2) the community's unique geographic characteristics, including proximity to cultural resources; 3) the degree to which the action may establish a precedent for future actions with significant effects; 4) loss of significant cultural or historical resources; and 5) the impact's relation to other cumulatively significant impacts.

¹⁴ See Appendix A, "Text of Executive Order 12898, 'Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,' Annotated with Proposed Guidance on Terms in the Executive Order," which is attached to CEQ's Environmental Justice Guidance Under the National Environmental Policy Act (1997)

- 11. The various factors related to an impact's intensity (discussed in 40 CFR §1508.27(b)) can also help inform an agency's consideration of potential mitigation measures and identification of potential disproportionately high and adverse impacts.
- 12. When assessing the availability of information regarding minority populations and lowincome populations in the affected environment, information may be less available than for the general population. When an agency is evaluating reasonably foreseeable significant impacts in an EIS, it may wish to consider the availability of information regarding minority populations and low-income populations. If relevant information on minority populations and low-income populations is not currently in the possession of an agency, this should be clearly stated. If the unavailable information is essential to making a reasoned choice among alternatives, NEPA provides that an agency must make reasonable efforts to collect the information, so long as the means for obtaining it are known and the cost is not exorbitant (see 40 CFR §1502.22(a)-(b)). If the overall costs of obtaining the unavailable information needed to conduct the analysis is exorbitant or the means to obtain it are not known, NEPA provides that an agency should (as appropriate): 1) state the information is incomplete or unavailable; 2) state the relevance of the incomplete or unavailable information; 3) summarize existing credible scientific evidence relevant to evaluating the impact; and 4) include an evaluation of such impacts based on theoretical approaches or research methods generally accepted in the scientific community. Agencies may consider addressing unavailable information in other NEPA documents in a similar manner. Agencies may choose to proceed in the same way if subpopulation information not currently in possession of an agency is not essential, but could aid in assessing impacts rather than determining significance regardless of whether the proposed action is significant (e.g., during Environmental Assessments).
- 13. Considering whether a proposed action may result in an impact with a low probability of occurrence, but with catastrophic consequences (i.e., low-probability, high impact event) can inform an agency's assessment of the significance of the impact. When analyzing a proposed action's impacts and risks in an EIS from reasonably foreseeable low-probability, high-impact events (including, but not limited to, accidental releases of contaminants and natural disasters) agencies may wish to consider the availability of information concerning the potential unique vulnerabilities of minority populations and low-income populations in the affected environment (see 40 CFR §1502.22(b)). Potential vulnerabilities of minority populations and low-income populations to low-probability, high-impact events may include, but are not limited to, a lack of infrastructure and resources to address these unanticipated impacts; inability to evacuate or relocate; lack of access to health care; and reliance on affected natural and cultural resources. Agencies may consider addressing unavailable information in other NEPA documents (e.g. during Environmental Assessments) in a similar manner.

14. The degree to which an impact to minority populations and low-income populations in the affected environment is highly controversial (see 40 CFR §1508.27(b)(4)) (e.g., a substantive dispute as to the size, nature, or effect of the action) can inform whether there is a significant impact. If an agency identifies a highly controversial impact to minority populations and low-income populations it may wish to consider seeking additional information and coordination in order to evaluate the controversy.

Specific Steps

As appropriate, agencies can consider the following actions:

- 1. Agencies may wish to recognize that there may be cultural differences among various individuals, communities, and organizations regarding what constitutes an impact or the severity of an impact.
- 2. Evaluation of impacts to minority populations and low income populations may inform other sections, including an agency's consideration of the affected environment, alternatives and meaningful engagement.
- 3. Agencies may wish to begin analyzing potential adverse and beneficial impacts to minority populations and low-income populations after the exposure pathways and environmental consequences of the proposed action (e.g., ecological, aesthetic, historic, cultural, economic, social, or health impacts) are identified and the affected environment is established. However, economic or social impacts, <u>alone</u>, are not considered significant unless they are interrelated with natural or physical environmental impacts.
- 4. Agencies may wish to make diligent efforts to meaningfully engage minority populations and low-income populations in the affected environment regarding possible impacts from the proposed action and document findings throughout the NEPA process. Engaging the community about possible impacts is most effective when initiated as early as possible in the NEPA process (see Section I).
- 5. Agencies may consider analyzing potential impacts in light of: 1) public input documented in Step Two above; and 2) previously collected data on minority populations and low-income populations in the affected environment, particularly with regard to unique conditions. Unique conditions include, but are not limited to ecological, aesthetic, historic, cultural, economic, social, or health vulnerabilities.
- 6. Agencies may consider describing all reasonably foreseeable direct, indirect and cumulative adverse impacts to minority populations and low-income populations in the affected environment that may result from a change to the environment or exposure to environmental

- contaminants (e.g., chemical, biological, physical, or radiological) or arising from related ecological, aesthetic, historic, cultural, economic, social, or health consequences of the proposed action to the community.
- 7. Agencies may consider describing all reasonably foreseeable direct, indirect and cumulative beneficial impacts to minority populations and low-income populations in the affected environment that may result from a change to the environment or exposure to environmental contaminants (e.g., chemical, biological, physical, or radiological) or arising from related ecological, aesthetic, historic, cultural, economic, social, or health consequences of the proposed action to the community.
- 8. Agencies may consider identifying and documenting sources of uncertainty in the impact analyses, particularly with regard to data supporting the characterization of subpopulations (see Minority Populations Section and Low-Income Populations Section).
- 9. Agencies may wish to provide the records that reflect an agency's rationale for any decisions made as part of the analyses, as well as an agency's chosen methods and data used to conduct the impact analyses.

VIII. <u>Disproportionately High and Adverse Impacts</u>

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- 1. As informed by CEQ's Environmental Justice Guidance Under the National Environmental Policy Act (1997), the identification of a disproportionately high and adverse impact on minority and low income populations does not preclude a proposed agency action from going forward, nor does it necessarily compel a conclusion that a proposed action is environmentally unsatisfactory. If an agency determines there is a disproportionately high and adverse impact to minority populations and low-income populations, an agency may wish to consider heightening its focus on meaningful public engagement regarding community preferences, considering an appropriate range of alternatives (including alternative sites), and mitigation and monitoring measures.
- 2. 'Context' and 'intensity', evaluated during the consideration of an impact's significance (see 40 CFR. §1508.27) may be factors that can (as appropriate) inform an agency's determination whether an impact is disproportionately high and adverse (see EO 12898).

- 3. 'Significance' may, as appropriate, be a factor in determining if an impact is disproportionately high and adverse. (See Appendix A, Text of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Annotated with Proposed Guidance on Terms' which is attached to CEQ's Environmental Justice Guidance Under the National Environmental Policy Act (1997). In some circumstances, an agency may determine that impacts are disproportionately high and adverse, but not significant within the meaning of NEPA. In other circumstances, an agency may determine that an impact is both disproportionately high and adverse and significant within the meaning of NEPA. A finding of no significant impacts to the general population is insufficient (on its own) to base a determination that there are no disproportionately high and adverse impacts to minority populations and low-income populations.
- 4. Disproportionately high and adverse impacts are typically determined based on the impacts in one or more resource topics analyzed in NEPA documents. Any identified impact to human health or the environment (e.g., impacts on noise, biota, air quality, traffic/congestion, land use) that potentially affects minority populations and low-income populations in the affected environment might result in disproportionately high and adverse impacts.
- 5. Agencies may wish to integrate the analysis of the potential for disproportionately high and adverse impacts to minority populations and low-income populations into the NEPA process. The basic principles and practices of analysis applicable to all resource topics analyzed in the NEPA document (air emissions, water, biota, human health, noise, etc.) apply to the analysis of disproportionately high and adverse impacts as well.
- 6. Agencies may wish to consider factors that can amplify identified impacts (e.g., the unique exposure pathways, prior exposures, social determinants of health) to ensure a comprehensive review of potential disproportionately high and adverse impacts to minority populations and low-income populations.
- 7. Agencies may wish to recognize that in instances where an impact from the proposed action initially appears to be identical to both the affected general population and the affected minority populations and low-income populations, there may be inter-related ecological, aesthetic, historic, cultural, economic, social, or health factors that amplify the impact (e.g., unique exposure pathways, social determinants of health, community cohesion). After consideration of factors that can amplify an impact to minority populations and low-income populations in the affected environment, an agency may determine the impact to be disproportionately high and adverse.
- 8. Agencies' approaches should not determine that a proposed action or alternative would not have a disproportionately high and adverse impact on minority populations and low-

income populations solely because the potential impacts of the proposed action or alternative on the general population would be less than significant (as defined by NEPA). Agencies may wish to consider unique vulnerabilities, special exposure pathways, and cultural practices associated with minority populations and low-income populations in the affected environment.

- 9. The disproportionately high and adverse impacts determination can help inform how an agency develops and/or selects alternative(s) and mitigation measures to avoid, minimize, rectify, reduce, or compensate for adverse impacts.
- 10. Agencies may wish to consider the distribution of beneficial and adverse impacts between minority populations and low-income populations in the affected environment and the general population as a factor in the disproportionately high and adverse impacts determination. Scenarios in which minority populations and low-income populations receive an uneven distribution of benefits in the presence of adverse impacts, (e.g. a smaller proportion of beneficial impacts accrue to minority populations and low income populations than the general population) could indicate a potential disproportionately high and adverse impact.
- 11. Beneficial impacts from, and mitigation measures to reduce the impacts associated with federal actions are distinct concepts.
- 12. Agencies' approaches to making a disproportionately high and adverse impact determination can be informed by the equitable distribution of beneficial impacts and how adverse impacts are mitigated. The end result is the same, as agencies consider mitigation for identified adverse impacts and address identified potentially disproportionately high and adverse impacts with additional mitigation measures informed by community involvement. Regardless of the approach that is selected, an agency may wish to explain its analysis and rationale.
- 13. While all approaches for identifying and addressing disproportionately high and adverse impacts consider the distribution of adverse and beneficial impacts to minority populations and low-income populations in the affected environment, the timing for considering mitigation varies for some approaches. Some agencies identify potentially disproportionately high and adverse impacts prior to developing mitigation measures for addressing the impact. Other agencies wait until all possible mitigation measures to address the impact have been developed before making the disproportionately high and adverse impact determination.
- 14. Agencies may wish to identify a relevant and appropriate comparison group when evaluating the impact of the proposed federal action on minority populations and low-income populations. The comparison group provides context (as appropriate) for the

analysis of human health effects, environmental effects and the risk or rate of hazard exposure to minority populations and low-income populations in the affected environment. Comparison groups are distinct from reference community (see Section V, Identifying Minority Populations and Section VI, Identifying Low-Income Populations) which are used to identify the existence of minority populations and low-income populations.

- 15. In the disproportionately high and adverse impact analysis, agencies may wish to compare (as appropriate) impacts to minority populations and low-income populations in the affected environment with an appropriate comparison group within the affected environment. Relevant and appropriate comparison groups are selected based on the nature and scope of the proposed project. The types of calculations used for the comparison can include, but are not limited to, rates and risks. In addition, agencies may wish to (as appropriate) reference relevant national, state, and/or local data sets to inform the determination of a disproportionately high and adverse impact.
- 16. Agencies may wish to consider delineating parameters for selecting relevant comparison groups that can be applied on a case-by-case basis. Parameters may be different for a programmatic document versus a document that is either tiered to the initial programmatic document or is a stand-alone site-specific NEPA review. More than one comparison group may be appropriate in some instances. When selecting relevant comparison groups, it is important to capture, as appropriate, relevant demographic, ecological, aesthetic, historic, cultural, economic, social, and health information. Considerations include, but are not limited to the following parameters:
 - a. Relevant jurisdictional boundaries based on the affected environment attributed to the specific impact being analyzed (county, state, or national level);
 - b. Environmental stressor sources that may cause adverse health effects, such as the number of environmentally-regulated facilities within a community, proximity of regulated facilities, and quality of the air, water, and other environmental media;
 - c. Existing health conditions, e.g., percent of infant mortality, average birth weight, adult mortality, life expectancy at birth, and life span (age groups; healthy vs. vulnerable populations);
 - d. General demographics, e.g., percent of racial/ethnic population, population density, percent of the Native American population, distribution of languages spoken in population, and percent of the population that is literate in English or other languages; and
 - e. Economic information, e.g., unemployment rate, income level and distribution, percent of homeowners and renters in a community, percent of residents relying on agriculture in the area, and percent relying on government resources.

- 16. Agencies may wish to document the selection process used to identify relevant comparison groups in the NEPA review document.
- 17. Potential disproportionately high and adverse impacts should be described quantitatively whenever possible. At minimum, agencies may wish to provide a qualitative description. Agencies may want to pay particular attention to the description of human health impacts, which may be described in terms of risks or rates of exposure, if appropriate data are available.

Specific Steps

As appropriate, agencies can consider the following actions:

Specific Steps from Previous Sections to be Completed Prior to DHAI Analysis:

- 1. Consider determining the affected environment for the proposed federal action. The geographic scope of the affected environment may be different for each resource topic analyzed in the NEPA document (e.g., human health, air, water, socio-economics, wildlife, etc.) and analyzed alternative. The NEPA documents should contain a description of the environment of the areas to be affected by the alternatives under consideration (see Section III, Affected Environment).
- 2. Consider referencing available information on environmental, and related ecological, aesthetic, historic, cultural, economic, social, or health impacts from the proposed action within the affected environment (see Section III, Affected Environment).
- 3. Consider determining whether any minority populations and low-income populations are present within the affected environment for each of the alternatives carried forward for detailed analysis in the NEPA document (see Section V, Minority Populations and Section VI, Low-Income Populations). Generally, if minority populations and low-income populations are not identified, then the environmental justice analysis is complete.
- 4. Consider analyzing direct, indirect, and cumulative impacts to minority populations and low-income populations in the affected environment from resource topics analyzed in the NEPA document for each alternative carried forward for detailed analysis in the NEPA document. Look at impacts to: 1) human health; and 2) other environmental effects (See Section VII, Impacts Analysis).
- 5. Consider determining whether any direct, indirect, or cumulative impacts to minority populations and low-income populations in the affected environment, for each alternative carried forward for detailed analysis in the NEPA document, are 'significant' (as employed by NEPA) (see Describing Impacts Section).

Specific Steps to Conduct the Disproportionately High and Adverse Impacts Analysis:

- 1. When appropriate and as decided on a case-by-case basis, agencies may wish to select and explain the parameters used for identifying a relevant and appropriate comparison group within the affected environment.
- 2. Consider identifying the relevant and appropriate comparison group within the affected environment using the parameters selected in Step One, above.
- 3. Agencies may wish to consider the degree to which any of the following seven factors ¹⁵ could amplify identified impacts. Factors that can potentially amplify an impact to minority populations and low-income populations in the affected environment include, but are not limited to, the following:
 - a. Proximity and exposure to chemical and other adverse stressors, e.g., impacts commonly experienced by fence-line communities;
 - b. Vulnerable populations, e.g., minority and low-income children, pregnant women, elderly, or groups with high asthma rates;
 - c. Unique exposure pathways, e.g., subsistence fishing, hunting, or gathering in minority and low-income populations;
 - d. Multiple or cumulative impacts, e.g., exposure to several sources of pollutions or pollutants from single or multiple sources;
 - e. DONE: NO ACTION- Ability to participate in the decision-making process, e.g., lack of education or language barriers in minority and low-income populations;
 - f. Physical infrastructure, e.g., inadequate housing, roads, or water supplies in communities:
 - g. Non-chemical stressors, e.g., chronic stress related to environmental or socio-economic impacts.

Agencies can be informed by considering additional factors that could amplify an impact to minority populations and low-income populations in the affected environment (as appropriate). Any identified factors that amplify the impacts to minority populations and low-income populations may (as appropriate) inform all subsequent analyses.

4. Consider summarizing adverse and beneficial impacts to both minority populations and low-income populations in the affected environment and, if applicable, appropriate comparison groups. Also, consider summarizing any mitigation measures that may have

¹⁵ See US EPA, *Factors for Identifying and Addressing Disproportionate Environmental Health Impacts* (2007); Supplement to American Journal of Public Health, Vol. 101, No. S1 (Dec 2011).

been developed prior to the commencement of the disproportionately high and adverse impact assessment that reduce adverse impacts to minority populations and low-income populations and, if applicable, comparison groups (see 40 CFR §1508.20). These summaries can (as appropriate) apply to the analysis of determining whether there is a disproportionately high and adverse impact from the proposed action for each alternative carried forward in the NEPA document.

- 5. Consider analyzing the distribution of adverse and beneficial impacts between the general population and minority populations and low-income populations in the affected environment as a factor when determining whether there is a disproportionately high and adverse impact. The distribution of adverse and beneficial impacts between the general population and minority populations and low-income populations is a factor that can be considered in the disproportionately high and adverse impacts determination.
- 6. There are various approaches to determine whether a proposed agency action will cause disproportionately high and adverse impacts to minority populations and low-income populations in the affected environment. For example:

a) Impact Focus Approach:

- i. Beneficial impacts are considered in the analysis of the distribution of adverse and beneficial impacts between the general population and minority populations and low-income populations in the affected environment (see Step 5 above).
- ii. Consider (as appropriate) relevant mitigation measures (including avoidance and minimization) developed prior to the commencement of the disproportionately high and adverse impact assessment that reduce adverse impacts to minority populations and low-income populations.
- iii. If an adverse impact to minority populations and low-income populations remains after accounting for the mitigation measures developed prior to the commencement of the disproportionately high and adverse impact assessment, an agency should continue to consider whether the remaining adverse impact(s) is/are disproportionately high and adverse.

b) Balancing Approach:

- Consider both mitigation measures developed prior to the commencement of the disproportionately high and adverse impact assessment that reduce adverse impacts to minority populations and low-income populations and any additional mitigation developed during the disproportionately high and adverse impacts assessment (see also Step iv. below).
- ii. After considering all appropriate mitigation measures, balance any remaining adverse impacts with beneficial impacts of the project to the community, as

- appropriate (see also Steps iv. and v. below).
- iii. If an adverse impact to minority populations and low-income populations remain after accounting for all appropriate mitigation measures and related project benefits, continue to consider whether the remaining adverse impact(s) is/are disproportionately high and adverse.
- iv. In determining the balance of beneficial and adverse impacts, the beneficial impacts and mitigation should be related to the type and location of the adverse impact.
- v. Agencies should not balance adverse impacts that directly affect human health at levels of concern, especially those that exceed health criteria, with project benefits.
- 7. When appropriate, as decided on a case-by-case basis, after full consideration of Specific Steps to Conduct the Disproportionately High and Adverse Impacts Analysis (see Steps 1-6 above) consider comparing direct, indirect and cumulative adverse impacts to minority populations and low-income populations in the affected environment within the geographic unit of analysis to an appropriate comparison group. Measurable standards and evidence-based approaches can be used, if available and appropriate. This comparison may be considered for each alternative carried forward for detailed analysis in the NEPA document.
- 8. Consider whether any of the following conditions are met, which may (as appropriate) be measured in risks and rates:
 - Exposure:
 - o exposure by minority populations and low-income populations to an environmental hazard that appreciably exceeds or is likely to appreciably exceed the risk or rate to the appropriate comparison group
 - Human health or environmental impact:
 - to minority populations and low-income populations is above generally accepted norms 16
 - o to minority populations and low-income populations exceeds or is likely to appreciably exceed the impact to an appropriate comparison group
 - o predominantly borne by minority populations or low-income populations
 - o occurs in minority populations and low-income populations affected by cumulative or multiple adverse exposures from environmental hazards

¹⁶Generally accepted norms is a term used in "Appendix A, Text of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Annotated with Proposed Guidance on Terms" which is attached to CEQ's <u>Environmental Justice Guidance Under the National Environmental Policy Act (1997)</u>.

- o to minority populations and low-income populations is significant and adverse.
- 9. Consider determining and stating in the NEPA document whether disproportionately high and adverse impacts exist for the proposed action and alternatives carried forward for detailed analysis in the NEPA document.
- 10. As appropriate, agencies may wish to reassess whether any disproportionately high and adverse impact is significant under NEPA through a review of context and intensity.
- 11. Consider communicating identified disproportionately high and adverse impacts to the affected minority populations and low-income populations and the public as early as appropriate to help identify potential mitigation measures.
- 12. As practicable, consider coordinating with minority populations and low-income populations in the affected environment as an agency develops and explores potential mitigation measures to address identified impacts to minority populations and low-income populations, including but not limited to those determined by an agency to be disproportionately high and adverse (see Section IX, Mitigation and Monitoring).

IX. Mitigation and Monitoring

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- 1. Identifying mitigation is an important component of NEPA and EO 12898. Generally, in NEPA documents, when an agency identifies potential adverse impacts it may wish to evaluate practicable mitigating measures, even if an agency determines the adverse impacts are not significant. The unique characteristics and conditions of minority populations and low-income populations in the affected environment may require adaptive and innovative mitigation measures to sufficiently address the specific circumstances and impacts presented by the proposed action. This includes mitigation of identified disproportionately high and adverse impacts, whenever feasible. Agencies may wish to evaluate mitigation measures even if the project will have some benefits to minority populations and low-income populations.
- 2. Throughout the NEPA process, agencies may wish to (as appropriate) involve potentially affected minority populations and low-income populations as agencies develop and implement mitigation measures and monitoring. Establishing groups made up of community members can be an effective method of engaging minority and low-income populations as an agency develops mitigation measures.

- 3. Agencies may wish to consider whether mitigation or monitoring measures can be included as conditions in its associated permits and licenses or in federal assistance grants and agreements, as appropriate.
- 4. Including monitoring requirements and sharing monitoring results with the public can often help to alleviate issues raised by minority populations and low-income populations. Discussions with minority populations and low-income populations regarding the types of monitoring information that are of interest and how to best share monitoring results may improve the effectiveness of monitoring efforts. Feedback from minority populations and low-income populations can also be considered when developing monitoring measures.
- 5. Agencies may wish to consider, when preparing an Environmental Assessment¹⁷, developing mitigation measures to avoid, minimize, rectify, reduce, or compensate for potentially significant adverse environmental impacts that would otherwise require full review in an EIS.
- 6. When there are unavoidable adverse impacts to minority populations and low-income populations in the affected environment, agencies may wish to consider appropriate compensating mitigation and/or additional project benefits and provide express details in the NEPA document (see 40 CFR §1508.20(e)). These unavoidable adverse impacts can also be addressed separately in an environmental justice technical report.
- 7. Agencies may wish to make their mitigation and monitoring commitments clear and accessible in a format easily understandable by the public, including minority populations and low-income populations.
- 8. Agencies may wish to identify mitigation and monitoring measures designed specifically to address impacts to minority populations and low-income populations in the affected environment separately in the NEPA decision document and also separately in an environmental justice technical report.
- 9. If mitigation measures for impacts to minority populations and low-income populations in the affected environment have been identified in the NEPA document, agencies may wish to develop an adaptive management plan and conduct implementation and effectiveness monitoring. Monitoring implementation of mitigation measures can inform an agency and community whether the measures are on schedule and when they have been completed. Through the use of effectiveness monitoring, an agency and community can learn if the mitigation measures are providing the predicted outcomes. An adaptive management plan

¹⁷CEQ, <u>Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of</u>
No Significant Impact (Jan. 2011)

can provide agencies with a means for taking corrective action if mitigation implementation or effectiveness monitoring indicates the measures are not achieving the intended outcomes.

Specific Steps

As appropriate, agencies can consider the following actions:

- 1. Agencies can be informed by data and information on the affected environment, adverse and beneficial impacts, direct, indirect and cumulative effects, and public outreach and participation when developing potential mitigation measures.
- 2. When agencies are developing mitigation measures they should consider engaging minority populations and low-income populations early and throughout the process, as appropriate.
- 3. Consistent with applicable requirements, agencies should identify and analyze mitigation measures for impacts to minority populations and low-income populations in the affected environment identified from the proposed action (see 40 CFR §§1502.14 and 1502.16). This includes appropriate mitigation measures not already included in the proposed action or alternatives (see 40 CFR §1502.14(f)) and any additional means to mitigate (if not fully covered under 40 CFR §1502.14(f)) for each identified disproportionately high and adverse impact to minority populations and low-income populations (see 40 CFR §1502.16(h).
- 4. If an agency determines there are disproportionately high and adverse impacts to minority populations and low income populations from its proposed project, the agency should consider and take action, as appropriate, to mitigate and monitor the impacts. When developing mitigation measures for adverse impacts, including for disproportionately high and adverse effects 18 to minority populations and low-income populations in the affected environment, consider the following five mitigation methods for each potential impact identified:
 - a. Avoiding an impact by not taking a certain action or parts of an action.
 - b. Minimizing an impact by limiting the degree or magnitude of the action and its implementation.
 - c. Rectifying an impact by repairing, rehabilitating, or restoring the affected environment.
 - d. Reducing or eliminating an impact's frequency over time, such as through preservation and maintenance operations during the life of the action.
 - e. Compensating for an impact by replacing or providing substitute resources or environments.

¹⁸ See e.g. <u>Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses</u>, (April 1998)

- 5. Consistent with applicable requirements, agencies should state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted. (See 40 CFR 1502.2(c)). If disproportionately high and adverse impacts are unlikely to be fully mitigated, agencies may wish to explain in the analysis which measures to avoid or minimize environmental harm to minority populations and low-income populations from the selected alternative would be adopted, and describe any measures that were not adopted, and why they were not. An agency's analysis can disclose remaining disproportionately high and adverse impacts on minority populations and low-income populations in the affected environment, if any, and explain why further mitigation is not proposed.
- 6. Consider specifying mitigation or monitoring commitments in terms of timeframe, measurable performance standards or expected results (as appropriate) so as to establish clear performance expectations, and include appropriate language in the NEPA documents. The description of the mitigation measures should include (as appropriate) accountability measures (e.g., identify clear consequences) for failure to implement selected mitigation or monitoring measures. Agencies can be informed regarding feasibility of implementation by an explanation of how the mitigation and monitoring measures will be funded and who will implement the measures.
- 7. Consider developing an implementation and effectiveness monitoring plan to track performance and outcomes and reference the plan within the decision document (as appropriate).
- 8. Consider including an adaptive management process to adjust mitigation measures based on monitoring results.
- 9. Consider providing mitigation commitments and monitoring reports to the public including minority populations and low-income populations in appropriate formats (e.g., online, in print) whenever possible.
- 10. When conducting an Environmental Assessment (EA), agencies may evaluate direct, indirect, and cumulative impacts to potentially affected minority populations and low-income populations for all of the relevant resource areas/impact topics. Regardless of whether an agency determines that a 'finding of no significant impact' (FONSI) or mitigated FONSI is appropriate for a proposed action analyzed in an EA, agencies may wish to explore in the EA mitigation measures for all potential adverse impacts. If issuing a FONSI, agencies may wish to clearly describe the specific mitigation for any identified impacts, including mitigation for impacts that are disproportionately high and adverse to minority populations and low-income populations.

NEPA and EJ National Training Product: Overview

The NEPA Committee seeks to improve the effective, efficient and consistent consideration of environmental justice issues in the NEPA process through the sharing of best practices, lessons learned, research, analysis, training, consultation, and other experiences of federal NEPA practitioners. To accomplish this purpose, the NEPA Committee produced a National Training Product (NTP) that serves as a companion to *Promising Practices for EJ Methodologies in NEPA Reviews (Promising Practices)*.

Several measures were taken to develop the foundation for the NTP. First, exemplary trainings on EJ from across the federal family were identified and reviewed for best practices. Second, training material from multiple federal agencies on EJ and NEPA including guidance, protocol and related documents, were assessed for best practices. Third, examples of NEPA reviews that addressed environmental justice were collected. Finally, draft PowerPoints were produced, reviewed and revised over the course of 36 months in order to produce the final NTP.

In addition, the NTP is aligned with *Promising Practices*. This alignment does not imply a line-by-line interpretation but that the key elements are captured. It is recommended that *Promising Practices* be read before taking the training and kept close by for reference so that the full nature and context of the NTP can be better understood. *Promising Practices* guiding principles and specific steps are referenced throughout the NTP. However, the NTP also includes more details and provides additional options, methods and examples.

The NTP consists of a Master PowerPoint Presentation that can be used in whole or in part to increase understanding of the intersection between NEPA and environmental justice. The target audience is federal NEPA and environmental justice practitioners. The NTP uses a variety of approaches (e.g. mapping tools, examples, and videos) to help explain elements of an effective environmental justice analysis in the NEPA process. It includes the following core elements:

BACKGROUND ON NEPA AND EJ

- Learning Objectives
- EJ Defined
- EJ/NEPA Common Themes
- Core Principles of EJ

INTEGRATION OF EJ ANALYSIS IN THE NEPA PROCESS

- I. Meaningful Engagement
- Outreach
- Other Options
- Public Participation

Case Example [NY/NJ/Philadelphia Metropolitan Airspace Redesign (FAA)]

II. Scoping Process

• Early Planning

Case Example [New Pueblo, Colorado Freeway (FHWA)]

III. Defining the Affected Environment

- Demographic Data
- Base Line Characteristics
- Unique Conditions

IV. Developing and Selecting Alternatives (Alternatives Analysis)

V. Identifying Minority Populations

- Guiding Principles
- Conduct Appropriate Analyses
- Test 1: The No-Threshold Analysis
- Test 2: Part 1- The 50% Criteria and Part 2 The Meaningfully Greater Test
- Determining Appropriate Benchmarks
- Comparative Magnitude vs Absolute Threshold

Case Example [Moganza to the Gulf Feasibility Study, Storm and Hurricane Risk-Reduction System (ACoE)]

VI. Identifying Low-Income Populations

- Guiding Principles
- Alternative Criteria Analysis
- Low-Income Threshold Criteria

Case Example [Did They Do It Right, an Interactive Scenario]

VII. Impacts

VIII. Disproportionately High and Adverse Impacts (DHAI)

- Disproportionate Impact Factors
- DHAI Determination
- Assessing Benefits and Burdens

Case Example [Gasco Development – Oil and Gas Development on BLM lands, Utah; Klamath River Facilities Removal, OR and CA]

IX. Mitigation and Monitoring

- Mitigation Methods
 Case Example [Central Corridor Light Rail Transit, Minneapolis-St. Paul, MN]
- Community Benefits Agreements
 Case Example Charleston Naval Base Expansion

NEJAC EJ IWG Panel*

DATE: October 12, 2016

TIME: 4:00 - 5:00 pm (plan to arrive by 3:30pm)

LOCATION: US EPA One Potomac Yard South, 2777 South Crystal Drive, 1st Floor, Arlington, VA 22202

Title: Dialogue with Federal Interagency Working Group on EJ

Purpose: Looking back over the past 8 years and moving forward by presenting highlights of the EJ IWG

FY 16-18 Focus Areas

Panel: 60 Minutes

Panel Discussion (40 Min)

Panelists:

Panel Intro/EJ IWG Direction/ Focus Areas: Mustafa Ali/EPA (5 Min)

Climate Change: Chris Trent/HUD (7 Min)

NEPA: Suzi Ruhl/EPA (7 Min)

RIWG: Reg 2/Christine Ash, Reg 4/Cynthia Puerifoy, Kim Lambert/USFW (15 Min)

Title VI: Daria Neal /DOJ (7 Min)

Panel Q&A (20 Min)

Handouts

EJ IWG Fact Sheet

EJ IWG Framework for Collaboration

EJ IWG Webinar Series Fact Sheet

*(National Environmental Justice Advisory Council (NEJAC), a federal advisory committee of the US EPA)

Contact: Marsha Minter, (202)566-0215, minter.marsha@epa.gov



JAN 1 4 2016

OFFICE OF THE ADMINISTRATOR

The Honorable John B. King Jr. Acting Secretary of Education U.S. Department of Education 400 Maryland Avenue, SW Washington, D.C. 20202

Dear Mr. King:

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

John, thather to help unch for your help on this!

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

Sincerely,

A. Stanley Meiburg



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JAN 13 2016

OFFICE OF THE ADMINISTRATOR

The Honorable Christina W. Goldfuss Chairwoman
Federal Interagency Working Group on Environmental Justice
Managing Director
Council on Environmental Quality
Executive Office of the President
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, D.C. 20501

Dear Ms. Goldfyss: (with

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration

continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

I hope that you and a senior leadership representative are able to participate in this interactive strategy session to clarify how we will work together to guide, support and enhance federal programs that affect overburdened and under-resourced communities in 2016 and beyond. Please respond to this invitation no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

Thank you for him!

Sincerely.

A. Stanley Meiburg



JAN 1 3 2016

OFFICE OF THE ADMINISTRATOR

The Honorable Elizabeth Sherwood-Randall Deputy Secretary of Energy U.S. Department of Energy 1000 Independence Avenue, SW Washington, D.C. 20585

Dear Ms. Sherwood-Randall:

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

I hope that you and a senior leadership representative are able to participate in this interactive strategy session to clarify how we will work together to guide, support and enhance federal programs that affect overburdened and under-resourced communities in 2016 and beyond. Please respond to this invitation no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

Sincerely,

A. Stanley Meiburg



JAN 1 3 2016

OFFICE OF THE ADMINISTRATOR

The Honorable Sally Quillian Yates Deputy Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, D.C. 20530

Dear Ms. Yates:

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

I hope that you and a senior leadership representative are able to participate in this interactive strategy session to clarify how we will work together to guide, support and enhance federal programs that affect overburdened and under-resourced communities in 2016 and beyond. Please respond to this invitation no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

Sincerely.

A. Stanley Meiburg



JAN 1 3 2018

OFFICE OF THE ADMINISTRATOR

The Honorable Sloan D. Gibson Deputy Secretary of Veterans Affairs U.S. Department of Veterans Affairs 810 Vermont Avenue, NW Washington, D.C. 20420

Dear Mr. Gibson: Sleav

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

I hope that you and a senior leadership representative are able to participate in this interactive strategy session to clarify how we will work together to guide, support and enhance federal programs that affect overburdened and under-resourced communities in 2016 and beyond. Please respond to this invitation no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

Sincerely,

A. Stanley Meiburg

Acting Deputy Administrator

the works of the mitigate of the commentation of the contract of the contract



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JAN 1 3 2016

OFFICE OF THE ADMINISTRATOR

The Honorable Krysta Harden
Deputy Secretary of Agriculture
Office of the Secretary
U.S. Department of Agriculture
Whittenberg Building
1400 Independence Avenue, SW
MS 0101, Room 200-A
Washington, D.C. 20250

Dear Ms. Harden: | Lyste-

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

I hope that you and a senior leadership representative are able to participate in this interactive strategy session to clarify how we will work together to guide, support and enhance federal programs that affect

overburdened and under-resourced communities in 2016 and beyond. Please respond to this invitation no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

Sincerely,

A. Stanley Meiburg

That of the formation of the second to the s Acting Deputy Administrator



JAN 1 3 2016

OFFICE OF THE ADMINISTRATOR

The Honorable Adam Neufeld Deputy Administrator of the General Services Administration Office of the Administrator U.S. General Services Administration 1800 F Street, NW Washington, D.C. 20405

Dear Mr. Neufeld:

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

plat of a month in month in the wal!

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

Sincerely,

A. Stanley Meiburg



JAN 1 3 2016

OFFICE OF THE ADMINISTRATOR

The Honorable Victor Mendez
Deputy Secretary of Transportation
Office of the Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Mr. Mendez: Victor

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

A. Stanley Meiburg

Acting Deputy Administrator

Holes, VichDot has a stranged

pristar unput of the

communities of the or pater with you!

country! and it's our

homer to be a Pater.



JAN 1 3 2016

OFFICE OF THE ADMINISTRATOR

The Honorable Christopher P. Lu Deputy Secretary of Labor U.S. Department of Labor Frances Perkins Building 200 Constitution Avenue, NW Washington, D.C. 20210

Dear Mr. Ku: Uris -

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

I know you don't med any presentation on this prove for your sufferent!

This prove for your sufferent!

This prove for your sufferent!

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

Sincerely,

A. Stanley Meiburg



JAN 1 3 2016

OFFICE OF THE ADMINISTRATOR

The Honorable Michael L. Connor Deputy Secretary of the Interior U.S. Department of the Interior 1849 C Street, NW Washington, D.C. 20240

Dear Mr. Connof: M. Vo -

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

I hope that you and a senior leadership representative are able to participate in this interactive strategy session to clarify how we will work together to guide, support and enhance federal programs that affect overburdened and under-resourced communities in 2016 and beyond. Please respond to this invitation no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

That you to being !

Sincerely,

A. Stanley Meiburg



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JAN 1 3 2016

OFFICE OF THE ADMINISTRATOR

The Honorable Nani A. Coloretti
Deputy Secretary of Housing and Urban Development
Office of the Deputy Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Room 10100
Washington, D.C. 20410

Dear Ms. Colorecti: Nani -

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

Sincerely,

A. Stanley Meiburg

Acting Deputy Administrator

I com't think of any
other against whose goals
align man closely with A.
Ac
own than young in this
aren. Fairling stronger, man
equitable community tength.
a partful term. This you!



JAN 1 3 2016

OFFICE OF THE ADMINISTRATOR

The Honorable Alejandro Mayorkas Deputy Secretary of Homeland Security Office of the Secretary U.S. Department of Homeland Security Building 410 245 Murray Lane Washington, D.C. 20528

Dear Mr. Mayorkas:

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

no later than January 22 by contacting Marsha Minter, working group program manager, at minter marsha@epa.gov. You may also send to her any questions you might have.

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

Sincerely,

A. Stanley Meiburg



JAN 1 3 2016

OFFICE OF THE ADMINISTRATOR

The Honorable Mary Katherine Wakefield, Ph.D., R.N. Acting Deputy Secretary of Health and Human Services Office of the Deputy Secretary U.S. Department of Health and Human Services Hubert H. Humphrey Building 200 Independence Avenue, SW, Room 614G Washington, D.C. 20201

Dear Dr. Wakefield:

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

There is a great partialize at what between an agreement already in this area - here is a straighter a straight charece he straighter I town more. There you!

Sincerely,

A. Stanley Meiburg



United States environmental protection agency

WASHINGTON, D.C. 20460

JAN 1 3 2016

OFFICE OF THE ADMINISTRATOR

The Honorable Bruce H. Andrews Deputy Secretary of Commerce Office of the Deputy Secretary U.S. Department of Commerce 1401 Constitution Avenue, NW Washington, D.C. 20230

Dear Mr. Andrews: Pruce -

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

Brue, this is a great apportant to partir in an area that is augusted to all of us - Hanks for

you sygnut!

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

Sincerely,

A. Stanley Meiburg



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JAN 1 3 2016

OFFICE OF THE ADMINISTRATOR

The Honorable Robert O. Work
Deputy Secretary of Defense
Office of the Secretary of Defense
U.S. Department of Defense
1010 Defense Pentagon, Room R3E944
Washington, D.C. 20301

Dear Mr. Work:

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

Sincerely,

This is a good opportunity for all of us to mak suggesting an commenty issues that are regulated would the country - Theles for you

30-4!

A. Stanley Meiburg

Acting Deputy Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JAN 1 3 2016

OFFICE OF THE ADMINISTRATOR

The Honorable Douglas J. Kramer Deputy Administrator of the Small Business Administration Office of the Administrator U.S. Small Business Administration 409 Third Street, SW Washington, D.C. 20416

Dear Mr. Kramer:

The Federal Interagency Working Group on Environmental Justice has been working hard on establishing an infrastructure for federal agencies to build upon decades of robust environmental-justice practices and lessons learned. As the convener of the working group, I invite you to attend a Deputies and Chiefs of Staff Collaborative Conversation on Environmental Justice on Thursday, February 4 from 1-3 p.m. in the Rachel Carson Great Hall at EPA headquarters.

The upcoming meeting is the third senior-level-leadership gathering since 2014 and will focus on the working group's direction during 2016 and beyond. It is critical that agencies have environmental-justice strategies that reflect ongoing efforts to incorporate environmental-justice principles into their programs, policies and activities for the next several years. We will discuss and finalize the working group's FY 2016-2018 Framework for Collaboration and the Report on Promising Practices for EJ Methodologies in NEPA Reviews. Deputies may also provide updates on integrating environmental justice into agencies' policies and highlight notable place-based collaborative projects. We will provide the draft documents and an agenda before the meeting.

As you know, the Federal Interagency Working Group on Environmental Justice has collectively advanced environmental-justice principles in areas such as the environment, health, transportation, housing, energy and economic development since 2011. The working group last year revised the 2011 charter to require agency senior leadership to meet twice a year to discuss agency collaborative efforts and commitments that will help achieve environmental justice. The EPA and the Council on Environmental Quality on May 27, 2015, hosted a Cabinet-level meeting to examine the effectiveness of agencies' environmental-justice strategies and to share how agencies are addressing environmental justice and working with communities to improve environmental, public health and economic conditions. President Obama's administration continues to demonstrate its commitment to strengthening our collaboration with communities we serve, government partners and all other interested stakeholders to create healthy and sustainable communities.

I hope that you and a senior leadership representative are able to participate in this interactive strategy session to clarify how we will work together to guide, support and enhance federal programs that affect overburdened and under-resourced communities in 2016 and beyond. Please respond to this invitation

no later than January 22 by contacting Marsha Minter, working group program manager, at minter.marsha@epa.gov. You may also send to her any questions you might have.

The EPA applauds your efforts to execute the mandates of President Clinton's Executive Order 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Thank you for your continued commitment to fighting environmental hazards and health risks that are barriers to economic opportunity and a healthier quality of life for all Americans.

Sincerely,

A. Stanley Meiburg

Acting Deputy Administrator

Fram:

Nitsch, Chad

To:

Alí, Mustafa; "arthur,blazer@osec.usda.goy"; '

bruce.gelber@usdoj.gov;

"CBarrett2@doc.gov"; "chris.cummiskev@hq.dhs.gov"; "Christopher,Upperman@sba.gov";

"David.Kiaus@hq.doe.gov"; "denise.roth@gsa.gov"; "edward.bradley@va.gov"; "Harriet.Tregoning@hud.goy";

"Jewel Mullen@hhs.gov"; "Kristen sarri@los.doi.gov"; Sullivan, Maureen SES OSD OUSD ATL (US);

"Kedric Payne@Hq.Doe.Gov"; "sam.hirsch@usdoj.gov"; "sophle.shulman@dot.gov"; "stephanie.gidigbi@dot.gov"; "Swirsky.Stephanie@dol.gov"; "vanita.gupta@usdoj.gov"

Cc:

"cvnthia.ferguson@usdoi.gov"; Ali, Mustafa; Blaha, Amber; "Amie.Brown@osec.usda.gov";

"Andrea.Falken@ed.gov"; Sarcinelia, Andrew J CIV OSD OUSD ATL (US); "williams.babette@dol.gov";

"Caitlin,Gregg@ogc.usda.gov"; Catherine.Johnson7@va.gov; "chanva.liv@hhs.gov"; "Christopher.Upperman@sba.gov"; "daria.neal@usdoj.gov"; "teresa.pohiman@dhs.gov"; "Evelyn Britton@gsa.gov"; "fleming.el-amin@dot.gov"; "Forrest Christian2@usdoi.gov"

"sfgaugush@osec.usda.gov"; "jennifer.hass@hq.dhs.gov"; "jason.broehm@dot.gov"; "jroberson@doc.gov"; "cheryl kelly@los.doi.gov"; "Kyle.Flood@ed.gov"; Belton, Linda D CIV (US); "Lisa.guiveors@hq.dhs.gov"; "stuart lisa@dol.gov"; "madeline.caliendo@gsa.gov"; Minter, Marsha; "megan.mack@hg.dhs.gov"

"melinda.downing@hc.doe.gov"; Mike.Martinez@wdc.usda.gov; "sandra.howard@hhs.gov";

(b) (c) "; "Sunaree.K.Marshall@hud.gov"; "Chris.B.Trent@hud.gov"; Nitsch, Chad; Finley.

Jeanine: Minter, Marsha

Subject:

[Non-DoD Source] Deputies Environmental Justice (EJ) Interagency Workgroup (IWG) Materials from 4 February

2016

Date: Attachments: Wednesday, March 23, 2016 4:23:01 PM EJ IWG Feb 4 2016 EJ Meeting Summary.pdf

Deputies EJIWG 4Feb2016 Notes.pdf WAWA Presentation EPA EJIWG 2016.pdf

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Please see attachments from the 4 February 2016 Deputies EJ IWG Meeting.

Materials include:

- Meeting Summary
- Meeting Notes
- Presentation

If you have any questions, please contact Marsha Minter at 202-566-0215 orminter.marsha@epa.gov < Caution-mailto:minter.marsha@epa.gov > .

Thank you,

Mustafa Santiago Ali

Senior Advisor on Environmental Justice to the EPA Administrator

From:

Minter, Marsha

To:

(cynthia_ferguson@usdoj.gov); Ali, Mustafa; Biaha, Amber; Amie Brown; Andrea Faiken; Sarcinella, Andrew J CIV (US); Babette Williams (williams.babette@dol.gov); Baietti, Joseph A (Joseph.A.Baietti@hud.gov); Burns, Michael; Catherine Johnson7@va.gov; Chanya Liv; Christopher Upperman; Daria Neal; Dr. Teresa Pohlman; Evelyn Britton; Fleming el-amin; Forrest Christian (Forrest Christian2@usdoj.gov); Hass, Jennifer; Jason Broehm; Jeff Roberson; Kelly, Cheryl (cheryl kelly@ios.dol.gov); Kyle Flood; Belton, Linda D CIV (US); Lisa Ouiveors; Lisa Stuart; Madeline Caliendo; Minter, Marsha; Megan Mack; Melinda Downing; NKeller@doc.gov; Sandra Howard; Shew, Erin K. EOP/CEO; Sunaree Marshall; Trent, Chris B (Chris.B.Trent@hud.gov); Walters, Carmel I -FS;

Buzzelle, Stanley; Dylan DeKeryor; Gina Allery; James Potter; Joanna Stancii; Nick Douglas;

rosanne.goodwill@dot.gov; Ruhl, Suzi; Zartarian, Valerie; Adam Neufeld; Bavishi, Jainey K. EOP/CEO

bruce.gelber@usdoi.gov; Catherine Barrett; Chris Cummiskey

(chris.cummiskey@hq.dhs.gov); David Klaus; Denise Turner Roth; Edward Bradley; Harriet Tregoning; Jewel Mullen; Kristen Sarri (Kristen sarri@ios.doi.gov); Sullivan, Maureen SES OSD OUSD ATL (US); Payne, Kedric; Sam Hirsch; Sophie Shulman; Stephanie Gidigbi; Stephanie Swirsky; Vanita Gupta (vanita.gupta@usdoj.gov)

Subject:

[Non-DoD Source] NEJAC registration closes at noon on Friday

Date: Attachments: Thursday, October 6, 2016 5:15:50 PM NEJAC Oct 12 EJIWG Panel.docx

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

Greetings—please try to attend if you are in the area or participate by teleconference. The EJ IWG panel is on Oct. 12 @ 4pm-5pm (one pager attached). Public Comment period begins at 6pm.

If you are planning to attend in person or by teleconference, please go to the site and register. The registration is open until noon tomorrow.

Caution-https://nejac-public-meeting-october-12th-13th-2016.eventbrite.com < Caution-https://nejac-public-meeting-october-12th-13th-2016.eventbrite.com >

Thanksl

Marsha Minter
US EPA
Associate Director
Office of Environmental Justice
(202)566-0215

Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions

January 2017

U.S. Department of the Interior U.S. Department of the Army U.S. Department of Justice

Copyright Information

This is a work of the U.S. Government and is in the public domain. It may be freely distributed, copied, and translated; acknowledgment of publication by the U.S. Departments of the Interior, the Army, and Justice is appreciated. Any translation should include a disclaimer that the accuracy of the translation is the responsibility of the translator and not the U.S. Government. It is requested that a copy of any translation be sent to U.S. Department of the Interior, the Army, or Justice. This work is available for worldwide use and reuse and under the Creative Commons CC0 1.0 Universal license.

Disclaimer

Recommendations in this Report do not impose legally binding obligations on any Federal agency. Each of the Federal agencies will act as an independent party with respect to performance of recommendations in this Report. This Report does not, and does not intend to, restrict the authority of any party to act as provided by law, statute, or regulation. This Report does not, and does not intend to, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any person against the United States, its departments, agencies, or entities, its officers, employees, or agents or any other person. Each Federal agency will bear its own expenses in connection with the preparation, negotiation, and execution of any recommendations of this Report. Any activities of the agencies in implementing this Report are subject to the availability of appropriated funds. Nothing in this Report obligates any of the agencies to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations.

Contents

| I. Executive Summary | 2 |
|--|----|
| II. Purpose of Report. | 4 |
| III. Overview of Key Concepts and Legal Framework | 5 |
| A. Key Concepts in Federal Indian Law and Policy | 5 |
| B. Current Legal Framework for Federal Infrastructure Decisions | 7 |
| C. Federal Efforts to Improve Infrastructure Permitting | 10 |
| IV. Nationwide Consultations - What Was Said | 11 |
| A. Summary of Tribal Comments | 11 |
| B. Tribal Recommendations | 14 |
| V. Key Principles and Recommendations | 16 |
| A. Key Principles for Consultation and Related Recommendations | 16 |
| B. Recommendations for Actions beyond Consultation Policy Updates | 19 |
| C. Next Steps for Federal Agencies | 25 |
| VI. Conclusion | 25 |
| Appendix 1. Dear Tribal Leader Letter | 26 |
| Appendix 2. Framing Paper | 27 |
| Appendix 3. Consultation Session Locations and Federal Attendees | 33 |
| Appendix 4. Agency Consultation Policies and Related Guidance | 35 |
| Appendix 5. Detailed Summary of Tribal Input | 43 |
| Appendix 6. Positive Examples and Innovations that are Working for Tribes at | |
| Partners Alike | 67 |

I. Executive Summary

Over the past eight years, the Obama Administration has made historic progress to strengthen the government-to-government relationship between the United States (United States or U.S.) and Federally-recognized Indian Tribes (Tribes or Indian Tribes) and to better fulfill the United States' trust responsibility to Tribes. In addition to creation of the White House Council on Native American Affairs, restoring Tribal homelands, and settling historic disputes, this Administration has prioritized Tribal consultation as a method for considering how Federal policies and decision-making processes affect the interests of Tribes and their members. With regard to infrastructure projects, historically Federal agencies have not, as a matter of policy, sought out Tribal input or consistently worked to integrate Tribal concerns into the project approval processes; Tribal consultation is a way to rectify this by recognizing the government-to-government relationship and taking Tribal interests into account from the start.

Investment in our Nation's infrastructure has also been a priority of the Obama Administration. The lack of 21st century infrastructure is particularly apparent in Indian country. Whether it is running water, roads, housing, or broadband, Tribal communities are often the most in need. National proposals included calling for investments in a cleaner, more reliable transportation system that reduces our reliance on fossil fuels, cuts carbon pollution, and helps mitigate impacts of climate change; expanding collaboration across the public and private sectors; and calling for establishment of a National Infrastructure Bank. Since 2011, the Administration has undertaken an ambitious effort to modernize the Federal Government's role in infrastructure permitting processes. Through a variety of actions, the Administration has sought to expedite the review and permitting of major infrastructure projects that will strengthen our Nation's economy, create jobs, and improve our competitiveness in the international market.

Recognizing these priorities are interlinked, on September 23, 2016, the Department of the Interior, Department of Justice, and the Department of the Army issued a joint letter to Tribal Leaders committing to a broad review and consultation with Tribes on how Federal decision-making on infrastructure and related projects can better allow for timely and meaningful Tribal input. This Report, *Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions*, is the product of this government-to-government consultation and comments received from fifty-nine Tribes (and eight organizations representing Tribal interests) in October and November 2016. It reflects the start of a continuing nation-to-nation consultation that is needed to ensure that infrastructure projects are sited in a manner that lives up to the United States' obligations to Tribes.

While each Tribe's comments were unique to their respective experiences, Tribes spoke with one voice as to the need for improvement in how and when Federal agencies engage Tribes prior to authorizing or otherwise initiating Federal infrastructure decisions. Specifically, Tribes stated that Federal agencies are inconsistent in the degree to which each agency is aware of, and implements, its responsibilities to engage with Tribes as sovereigns in accordance with the

¹ As proposed, the National Infrastructure Bank would leverage public and private funds to invest in infrastructure nationwide.

government-to-government framework, the Federal relationship, and Tribal reserved rights through treaties and other legal authorities. Even where such rights and responsibilities are explicit in law, regulation, or policy, Tribes asserted that Federal agencies often fail to fully implement them.

Along these lines, Tribes further remarked that even the best-written agency Tribal consultation policies are often poorly implemented. Tribes noted that often agencies neither treat Tribes as sovereigns nor afford Tribes the respect they would any other governmental entity—let alone treat Tribes as those to whom the United States maintains a trust responsibility or as those who hold reserved rights through treaties that granted the United States vast amounts of territory. Tribes emphasized that the spirit with which consultation is conducted is essential, Tribes need to be consulted sooner, Federal staff need better training prior to working with Tribes, and that consultation should be more consistent across agencies.

In addition to these more general comments, Tribes also identified obstacles to their meaningful participation in Federal decision-making under specific statutes, and suggested changes in the language and/or implementation of these statutes. However, in doing so, Tribes also noted that they are not universally opposed to infrastructure investments. To the contrary, roads, broadband, transmission and energy resources are important to Tribal economies and economic development. Tribes emphatically said that they want to be part of the process from the start, rather than being included only after relevant determinations have already been made or projects have already commenced. Tribes also objected to having to use the legal system as a way of making their voices heard. They noted that when infrastructure investments affect Tribal interests, these investments should also benefit Tribes so that Tribes have better access to broadband, better transportation, and cleaner, safer energy options, just like the rest of our Nation.

Based on Tribes' input, this Report articulates a set of principles that should inform agency practices in the realm of infrastructure. Among other things, this includes appropriate staffing, training, and resource allocations, as well as guidance as to how Tribal interests should be incorporated into agency decision-making processes in both formal and informal ways. These recommendations should help agencies fulfill their dual responsibilities of complying with applicable treaty and trust responsibilities and ensuring a smooth runway for infrastructure investments.

This Report does not set forth a detailed discussion of each individual agency's consultation policies and practices or make comprehensive recommendations for policy, management, or legislative action. Additional Tribal consultations must be held to fully shape such comprehensive recommendations. However, included in this Report are a handful of specific recommendations for agencies and agency actions underway. In addition, this Report recommends that each agency undertake a detailed analysis of its own Tribal consultation policies and practices, as well as relevant statutory authorities, in order to ensure that each agency's decision-making processes honor the government-to-government relationship with Tribes and continue to fulfill the Federal trust responsibility to Tribes.

In analyzing their Tribal consultation policies and practices, agencies should examine whether the policies and practices are consistent with the recommendations of this Report. Agencies should provide a written account of their findings to the White House Council on Native American Affairs (WHCNAA)² and also make these findings available online no later than April 1, 2017. The WHCNAA and Federal agencies that have a role in improving the Federal infrastructure permitting processes may then review agency submissions and discuss Tribal consultation as a topic at its 2017 first quarter meeting. These agency submissions will also provide stakeholders and Congressional leaders with a sense of what statutory, regulatory, and funding barriers hinder agencies from improving Federal decision-making on infrastructure and related projects, identify next steps in improving and fully implementing robust Tribal consultation policies and practices, and inform efforts to advance infrastructure investments and agency Tribal consultation practices moving forward.

II. Purpose of Report

While the Federal Government has made great strides towards making Tribal consultation a standard part of the Federal review and decision-making process, Tribes have expressed frustration with inconsistent authorities, implementation, policies, and practices across the Federal Government and across the country with regard to consultation. In the September 23, 2016 letter to Tribal Leaders, the Departments of Interior, Justice, and the Army committed to a broad review and consultation with Tribes on how Federal decision-making on infrastructure and related projects can better allow for timely and meaningful input from Tribes (Appendix 1). A subsequent Framing Paper discussed in greater detail the type of information the Departments sought from Tribes during the consultations (Appendix 2). Specifically, Federal agencies sought feedback concerning best practices for Tribal consultation and asked for Tribal input on questions in two broad categories:

- 1) Promoting Meaningful Government-to-Government Engagement within the Existing Framework. How can Federal agencies better ensure meaningful Tribal input into infrastructure-related reviews and decisions to protect Tribal lands, resources, and treaty rights within the existing framework?
- 2) Identifying Any Necessary Change to the Existing Framework. Where and when does the current framework present barriers to meaningful consultation? What changes to the current framework would promote these goals?

In October and November 2016, Federal agencies convened a series of seven government-to-government consultation sessions and one listening session with Tribal leaders in locations around the country (Appendix 3). Concurrently, a written comment period provided an avenue for Tribes to submit written comments in addition to or in place of participating in the inperson sessions. In sum, eighty-seven written comment submissions were received and fifty-nine Tribes and eight organizations representing Tribal interests provided input on the questions

² The WHCNAA is tasked with improving coordination of Federal programs affecting Tribes and the use of resources available to Tribal communities.

posed. 175 Federal staff representing sixteen Federal agencies participated in one or more of the sessions.

This Report serves several functions. First, it provides information about the existing Federal statutory, regulatory, and policy framework governing both Tribal consultation and Federal decision-making on infrastructure and related projects. Second, it serves as a record of Tribal input on this topic, summarizing both written and oral comments received during the consultations, listening session, and written comment period. Third, in order to improve both consultation and infrastructure permitting processes, this Report recommends that agencies undertake a thorough review of their consultation policies and practices, and that consultation policies be provided to the WHCNAA and made publicly available (if they are not already). The Report provides an initial Federal response to Tribal comments and recommendations along with a set of principles that should inform Tribal consultation. Finally, the Report highlights best practices gleaned from what Tribes identified as successful Tribal consultations and makes recommendations for further research, administrative, regulatory, or legislative action.

III. Overview of Key Concepts and Legal Framework

Recognizing the complexity of the historical, legal, and policy framework that informs both Tribal affairs and infrastructure issues, this section of the Report serves as a primer on key concepts and statutes relevant to both Federal Indian law and environmental and related issues governing Federal infrastructure review and permitting. This is not a comprehensive summary of all issues, but rather a starting point to ensure all readers have a foundation in some of the key legal principles in these fields.

A. Key Concepts in Federal Indian Law and Policy

Treaty Rights and Trust Responsibilities

From this Nation's founding until Congress's 1871 decision to end treaty making with Indian Tribes, the United States entered into many treaties with Tribes under the authority granted by the Treaty Clause and Indian Commerce Clause³ in the United States Constitution. Treaties are agreements between two sovereign nations and are, along with the Constitution and Federal laws, the supreme law of the United States. These treaties not only recognize Tribal sovereign authority, but also reserve all rights not expressly granted to the United States and often include express reservations of certain rights, such as hunting and fishing, and the guarantee of goods and services such as food, education, and healthcare. Treaties were also a means by which Tribes granted to the Federal Government vast tracts of Indian land, which was used for homesteading and rights-of-way, while reserving lands for Tribes.

³ Article I, Section 8, Clause 3 of the Constitution grants Congress the authority to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." This latter clause is referred to as the "Indian Commerce Clause" and has been interpreted by courts as granting Congress plenary authority over Indian affairs.

The Constitution provides the legal basis for the nation-to-nation relationship between the United States and all Tribes. One of the basic principles of Indian law is that the United States has a special trust relationship with all Indian Tribes. Congress has defined the trust relationship in statutes, and in some cases, has imposed fiduciary obligations on Executive branch agencies. Congress has repeatedly reaffirmed the trust relationship. See, e.g., Indian Trust Asset Reform Act, Sec. 101-102. Pub. L. 114-178 (June 22, 2016). This trust relationship serves as an underlying basis for Tribal consultation practices discussed throughout this Report.

Tribal Consultation

Tribal consultation is a process that aims to create effective collaboration with Tribes and inform Federal decision-makers.⁴ Consultation is built upon a government-to-government exchange of information defined, in part, by meaningful dialogue based upon trust, respect, and shared responsibility.⁵ In addition, this kind of consultation has a defined, agreed-upon purpose, subject, and objective. By proactively involving Tribes in the Federal decision-making process whenever Tribal interests are affected, Federal agencies will often improve the quality of their decision-making, improve outcomes for affected communities, protect Tribal interests, and reduce litigation risk.

President Obama reaffirmed the Federal commitment to Tribal consultation in his November 9, 2009 Presidential Memorandum on Tribal Consultation (Presidential Memorandum),⁶ which directed agencies to fully implement the policies and directives of Executive Order 13175 (E.O. 13175),⁷ Consultation and Coordination with Indian Tribal Governments, issued by President William J. Clinton on November 6, 2000. E.O. 13175 establishes policymaking criteria that promote respect for Tribal self-government and directs agencies to have an accountable process to ensure meaningful and timely input by Tribal officials in the development of regulations and policies that have Tribal implications.

For instance, E.O. 13175 and the Presidential Memorandum direct agencies to engage in Tribal consultation regarding policy decisions "that have substantial direct effects on one or more Indian [T]ribes, on the relationship between the Federal Government and Indian [T]ribes, or on the distribution of power and responsibilities between the Federal Government and Indian [T]ribes." Some agencies have issued consultation policies that require consultation regarding agency actions and decisions not specifically addressed in E.O. 13175, such as by requiring consultation for other types of agency actions, or when the effects on Tribes are more indirect or speculative. Thus, the specific circumstances under which a given agency will initiate Tribal consultation accordingly may vary on an agency-by-agency or statute-by-statute basis. However, throughout the course of the Obama Administration, at least eight Federal agencies have

⁴ Secretarial Order 3317 §4(b), U.S. Department of the Interior, December 1, 2011.

⁵ Id

⁶ https://www.whitehouse.gov/the-press-office/memorandum-tribal-consultation-signed-president

⁷ https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments

renewed, updated, or created Tribal consultation policies in accordance with the Presidential Memorandum and E.O. 13175 (Appendix 4).

B. Current Legal Framework for Federal Infrastructure Decisions

In addition to the authorities generally governing Federal relations with Indian Tribes discussed above, there are a variety of statutes, regulations, and executive orders that govern Federal involvement in infrastructure, extractive, and other projects that may affect Tribal lands or resources. Many types of infrastructure projects require Federal funding, permits, or other authorization. For example, infrastructure projects may trigger requirements under the Clean Water Act, the Endangered Species Act, the Natural Gas Act, or other Federal statutes. Projects that are located on or cross Federal or Indian (trust or restricted) land generally require approval from the relevant land management agency, such as the U.S. Forest Service, the Bureau of Land Management, or the Bureau of Indian Affairs.

Statutes, regulations, and judicial decisions constrain the scope of an agency's review or permitting authority, including what factors and evidence the agency may consider in its review. The applicability of any particular legal authority depends on factors such as the type of the project, where it is located, its source of funding, and/or particular site-specific issues. Agencies also undertake more comprehensive planning processes that can affect infrastructure permitting processes and decisions, such as the Bureau of Land Management's Resource Management Plans or the U.S. Forest Service's Planning Rule. Conversely, some infrastructure projects, such as a privately funded project on private or state land, may not require any Federal permits or reviews. Other projects may have only limited Federal involvement focused on a specific element of the project, such as the discharge of dredged or fill material into waters of the United States, including wetlands.

When a project does require a Federal permit or authorization, the Federal agency involved may have a duty to consult with Tribal governments, depending on requirements under applicable statutes. Generally, a Federal agency will only consult with Tribes regarding the portion of an infrastructure project over which that agency has jurisdiction. For some projects, multiple Federal agencies have jurisdiction over a project, but typically each agency conducts its own consultation process. The legal framework also influences the timing of Federal review. If there is limited Federal involvement with a project, the Federal agency may not learn of a project until late in the planning and development process. All of these limitations present challenges for integrating Tribal input into project outcomes.

The following discussion provides an overview of some of the most common statutes that apply during a major infrastructure project. These topics were selected for inclusion based on the issues Tribes raised in the listening session, consultations, and written comments.

The National Environmental Policy Act and Environmental Reviews

The National Environmental Policy Act (NEPA) requires Federal agencies to incorporate environmental considerations into their decision-making processes. NEPA requires that prior to funding, authorizing, or implementing a given project or course of action, Federal agencies must

assess the action's direct, indirect, and cumulative impacts on the environment. Implementing regulations direct Federal agencies to encourage and facilitate public involvement to the fullest extent possible in decisions that affect the quality of the environment. Tribes may be involved in a NEPA review through the general public participation process or, more formally, as a cooperating agency. NEPA also requires agencies to evaluate a range of reasonable alternatives when deciding whether to approve a project. Depending on the type of Federal action and its likely impacts, agencies comply with NEPA by: 1) demonstrating the reason the project fits within a categorical exclusion from review; or 2) completing either an environmental assessment or an environmental impact statement.

The National Historic Preservation Act and Historic Preservation Reviews

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to consider the effects of proposed Federal projects or actions on historic properties, prior to the expenditure of funds or issuance or approvals for permits or licenses, and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. Section 106 seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the Federal agency official and consulting parties in the early stages of project planning. The goal is to identify historic properties potentially affected by the proposed Federal projects or actions, assess potential effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties. Consulting parties must include State Historic Preservation Officers and Tribal Historic Preservation Officers, Indian Tribes, Native Hawaiian Organizations, local governments, and applicants, as appropriate. Specifically, Federal agencies are required to consult with any Indian Tribe that attaches religious and cultural significance to historic properties that may be affected by proposed Federal projects or actions. The agency is required to involve the public at certain points within the review process and may include consulting parties and individuals and organizations with a demonstrated interest in the project or action as additional consulting parties.

The ACHP has issued government-wide regulations as well as specific guidance regarding tribal consultation. The U.S. Army Corps of Engineers (Corps) promulgated its own regulation for the protection of historic properties under NHPA, commonly known as Appendix C. The Corps published Appendix C in 1980, before the ACHP promulgated its revised regulations implementing the 1992 amendments to the NHPA which include, among other things, the need to consult with Tribes when historic properties of religious or cultural importance could be affected. In order to ensure consistency with the NHPA amendments and ACHP regulations, the Corps issued an agency-wide Tribal consultation policy in 2012 and several Interim Guidance documents specific to the Corps' regulatory program that outline requirements for consulting with Tribes on Section 106 matters. These guidance documents include references to ACHP's regulations for various aspects of the consultation process. In addition, the Corps issued an agency-wide Tribal consultation policy in 2012 and a regulatory-specific Tribal consultation memorandum in 2016.

^{8 36} C.F.R. part 800

^{9 33} C.F.R. part 325

Native American Graves Protection and Reputriation Act

The Native American Graves Protection and Repatriation Act (NAGPRA) was passed into law in 1990. Along with its implementing regulations, NAGPRA protects Indian Tribes', Native Alaskan entities', and Native Hawaiian organizations' rights to custody of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony with which they have a relationship of cultural affiliation that are discovered on Tribal or Federal lands. NAGPRA would apply in the event that an infrastructure project being built on Federal or Tribal land encountered human remains or other cultural items that are identified as Native American.

Clean Water Act

The Clean Water Act (CWA) and its implementing regulations establish the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. One CWA provision that comes into play as part of Federal review of infrastructure projects is Section 404.

Section 404 regulates the discharge of dredged or fill material into the waters of the United States, including wetlands. It requires a Corps permit prior to entities making such a discharge unless the activity is exempted from Section 404 regulation (e.g., certain farming and forestry activities). This includes discharges of dredged or fill material into waters that may be associated with a variety of project types, including infrastructure such as energy generation and transmission, roads, rail, dams, airports, ports, or navigation. In general, no discharge of dredged or fill material may be permitted if (1) a practicable alternative exists that is less damaging to the aquatic environment or (2) the Nation's waters would be significantly degraded. EPA and the Corps have issued regulations and guidelines interpreting various aspects of the CWA.

General Mining Act of 1872 and Federal Land Policy Management Act

The General Mining Act of 1872 (Mining Act) authorizes and regulates the mining of mineral deposits on most Federal public lands. ¹⁰ The Mining Act opened "all valuable mineral deposits," such as gold, silver, copper, and uranium, in unreserved lands belonging to the United States to exploration and purchase. The 1976 Federal Land Policy and Management Act (FLPMA) and various agency regulations protect the surface resources of Federal lands during exploration and mining activities, and generally prohibit unnecessary or undue degradation of public lands. The Mining Act itself contains no environmental protection measures, but mining activities on Federal lands are subject to NEPA and other Federal, state, and local regulations for air and water quality and solid waste management.

¹⁰ Some lands are withdrawn from mineral entry and claims, including Indian reservations, National Parks, National Monuments, and most reclamation projects and wildlife protection areas.

The Natural Gas Act and Energy Policy Act of 2005

The Federal Energy Regulatory Commission (FERC) reviews and permits natural gas pipelines pursuant to the Natural Gas Act and the Energy Policy Act of 2005. This permitting process generally involves three stages—pre-filing, application, and post-authorization. The pre-filing process provides opportunities for stakeholders, including Tribes, to get involved early and provide relevant views and information, promoting coordination and a shorter overall timeframe. In deciding whether to grant or deny an application, FERC considers multiple factors, including a project's potential impacts on pipeline competition, the possibility of overbuilding, potential environmental impacts, and other considerations.

Laws Applicable to Interstate Oil Pipelines

Interstate oil pipelines are reviewed and permitted primarily at the state level. The construction of an oil pipeline requires Federal authorization only if it crosses Federal land or Federally-regulated waters. If a pipeline crosses Federal land, the Federal agency responsible for managing that land (e.g., BLM) is responsible for issuing a right-of-way permit or easement. A pipeline that requires construction in Federally-regulated waters will also require permits or other approvals from the Corps.

Once a pipeline is constructed, FERC is the Federal agency responsible for regulating rates and conditions of service. FERC regulates rates and the terms and conditions of service offered by oil pipelines engaged in interstate commerce. The Pipeline and Hazardous Materials Safety Administration (PHMSA) is responsible for monitoring oil pipeline safety.

C. Federal Efforts to Improve Infrastructure Permitting

Since 2011, the Administration has undertaken an ambitious effort to modernize the Federal Government's role in the environmental review and permitting process. Through a variety of actions, the Administration has sought to expedite the review and permitting of major infrastructure projects that will strengthen our Nation's economy, create jobs, and improve U.S. competitiveness. At the same time, these review processes must improve environmental and community outcomes. Two examples of these efforts are detailed below: (1) the Fixing America's Surface Transportation (FAST) Act and the Federal Permitting Improvement Steering Council (FPISC); and (2) infrastructure permitting processes for development on Tribal lands.

FAST Act & the Federal Infrastructure Permitting Improvement Steering Council

The FAST Act was enacted on December 4, 2015. Title 41 of the FAST Act (FAST-41) created a new governance structure, set of procedures, and funding authorities designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for certain infrastructure projects. FAST-41 created the FPISC, which is composed of thirteen agency Deputy Secretary-level members and chaired by an Executive Director appointed by the President.

FAST-41 applies to two different categories of infrastructure projects: 1) projects that are subject to NEPA, likely to require a total investment of more than \$200 million, and not already subject to abbreviated review procedures; and 2) projects subject to NEPA that, in the opinion of FPISC, are likely to benefit from enhanced Federal oversight and coordination. Subject to limited exceptions, infrastructure projects that fall into either of these two categories are required to develop multi-agency coordinated project plans that set out timetables for applicable environmental reviews and authorizations, and must include schedules for public and Tribal outreach and coordination. FAST-41 covered projects are not expedited; under FAST-41, agencies are expected to follow the schedules they agree to in the coordinated project plans for covered projects.

Improving Processes for Permitting and Infrastructure Development on Tribal Lands

There have also been recent efforts to improve Federal review processes for a variety of infrastructure and related activities on Tribal lands. For example, the Department of the Interior issued new regulations in 2012 that clarify the procedures for obtaining Bureau of Indian Affairs (BIA) approval of residential, business, and wind and solar lease documents, and establish deadlines for BIA to issue decisions on complete lease applications. Importantly, these regulations provide greater deference to Tribes for Tribal land leasing decisions. The Department of the Interior similarly revised its regulations for granting rights-of-way across Indian land in 2015. Another example is efforts led by the Department of Housing and Urban Development (HUD) to simplify Tribal housing development and its related infrastructure needs. After a series of Tribal information sessions, listening sessions, and formal consultation, as well as coordination among Federal agencies, a report was provided to Congress containing recommendations that HUD and its interagency partners are in the process of implementing as of the time of this Report's publication. ¹¹

IV. Nationwide Consultations - What Was Said

Tribal input received during this Tribal consultation has described some systemic issues with the way Federal agencies solicit and account for Tribes' input into infrastructure decisions. Additionally, some Tribes voiced concern on the effectiveness of the current framework itself. This section provides an overview of Tribes' comments and recommendations. For more detail, please see the summary of Tribal comments and recommendations at Appendix 5. 12

A. Summary of Tribal Comments

Tribal Perspectives on Consultation

Overall, Tribes provided their views that meaningful government-to-government consultation occurs when Federal agencies and Tribes, as sovereigns, have an open dialogue to

¹¹ http://portal.hud.gov/hudportal/documents/huddoc?id=CoorEnvirReview.pdf

¹² Note: The views expressed in Section IV are summaries of comments received during this Tribal consultation process. These views do not necessarily represent the view of the Federal Government.

share information early on in the process and sincerely work in partnership toward consensus on a path forward. Tribes expressed their experiences with Federal agencies treating government-to-government consultation as a "box-checking" procedural exercise, rather than an opportunity to substantively address Tribal concerns and obtain Tribal consent. Tribes repeatedly cited to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as authority for requiring Tribes' free, prior, and informed consent for any infrastructure-related project that may affect Tribes or treaty rights. Also, a few Tribes provided positive examples of when government-to-government consultation relating to infrastructure projects has worked well. See Appendix 6 for more details on these positive models for Tribal engagement.

Tribal Perspectives on Federal Infrastructure Projects

In the listening session, consultation sessions, and written comments, Tribes acknowledged the importance of infrastructure to Tribal economies and economic development. Conversely, many Tribes shared turning points in their histories where a specific Federally-approved infrastructure project, on which the Tribe was not adequately consulted, had devastating effects on the Tribe's community, resources, ability to engage in ceremonial and cultural practices, and their members' survival. For example, Tribes cited the construction of dams that flooded their homes; the installation of infrastructure that destroyed resources on which the Tribe depended for hunting, fishing, and gathering; and the authorization of mining activities that degraded tribal waterways. Tribes noted that these threats continue with each new infrastructure project because of a lack of adequate Tribal participation in the Federal decision-making process.

Tribes reported feeling powerless to influence the direction of infrastructure projects in the beginning stages, or to prevent the ultimate damage or destruction of their resources, cultural items, and sacred sites and landscapes that are part of their identity, culture and spirituality, and survival. Tribes also noted that once the damage or destruction has occurred, project proponents that caused the damage or destruction and the Federal agencies that approved the projects appear to bear no consequences. Tribes indicated that their insight and expertise are often overlooked despite the fact that they have a vast amount of cultural, historical, and geographical knowledge about their ancestral territory and practices. Tribes suggested that if properly utilized by the Federal government, this knowledge could help ensure that infrastructure projects are completed in a timely manner that avoids negative impacts on Tribal resources and treaty rights and reduces the risk of subsequent disagreement or litigation.

Tribes noted that the agencies' NHPA and NEPA processes provide opportunities for Tribal input, but that agencies' approaches to obtaining input are inconsistent, and that Tribes should be given a greater voice in these processes because they are uniquely situated to identify potential impacts to Tribal interests. Tribes also emphasized the need for Tribal input into projects under the FAST Act, including input on whether projects should be eligible for "fast tracking" and ensuring ongoing Tribal input through representation on the FPISC.

Timing

Tribes stated the need to initiate consultation at the earliest possible point is of paramount importance so Federal agencies can take proper steps to mitigate impacts on Tribal interests before a decision is made. Tribes argued that timing is key to ensure their concerns are taken into account and addressed, thus minimizing potential delays due to disputes or litigation. Tribes suggested Federal agency leaders and staff should initiate government-to-government consultation as soon as the Federal agency is approached with a potential project affecting Tribal interests.

Scope

Tribes expressed frustration that Federal agencies' review of any particular project under NEPA and NHPA is often narrow. For example, Tribes noted a Federal agency may have jurisdiction over only a specific aspect of the project, and therefore focus its NEPA review on that specific aspect without looking at the consequences that flow from the approval of that aspect or examining the cumulative effects. Tribes also expressed concern with relying on nationwide permits and programmatic environmental assessments and environmental impact statements, which do not allow for the individualized examination of impacts to Tribal resources.

Tribal-Federal Relationship

Tribes frequently commented that Federal agency leaders and staff often treat Tribes merely as stakeholders. Tribes repeatedly emphasized that they should be regarded as sovereign governmental entities who are trust beneficiaries and holders of treaty rights.

Education & Training

Tribes stated that many Federal leaders and staff dealing with infrastructure matters lack an understanding of the trust and treaty responsibilities, how to work with Tribes effectively, Tribal histories and cultures, and Federal agency policies—all of which, in turn, affect their daily execution of agency missions. Accordingly, Tribes emphasized the need to educate Federal agency leaders and staff dealing with infrastructure matters on basic principles of the Federal Government's responsibilities to Tribes and the history of the United States' relationship with Tribes. Tribes noted that this information would assist Federal agency leaders and staff in identifying whether a given action may implicate Tribal interests, and therefore should be subject to government-to-government consultation. Likewise, such information would provide a starting point for the Federal agency leaders and staff to better understand Tribal input. In turn, Federal agencies could be better positioned to understand whether projects requiring Federal approvals may be impacting Tribes' ancestral lands that may hold human remains, cultural items, and sacred sites, or ceded lands in which Tribes have hunting, fishing, gathering, or other rights.

Resources and Tribal Capacity

During the course of the consultations, Tribes regularly cited capacity constraints as a factor in their ability to process and respond to infrastructure-related requirements and requests. Tribes asked agencies and Congress to provide funding for Tribes to increase their own capacity

to engage in Tribal Consultation and to remunerate Tribes for costs associated with consultations, such as: providing ready access to technical expertise, attending consultations, conducting studies, and producing reports. These Tribes noted that it is important that a Tribe's technical experts participate in consultations (in addition Tribal leaders and non-Tribal experts who may be involved in any given project) because they are knowledgeable about the cultural and historical considerations important to the Tribe.

B. Tribal Recommendations

Tribes offered many recommendations for improving the consultation process. Suggestions ranged from legislative changes to various administrative actions, including, but not limited to, new or revised executive orders, new Office of Management and Budget guidance, the provision of financial assistance to Tribes, and training to Federal leaders and staff. The following subsections highlight some of the most commonly heard suggested changes to the existing legal framework for Federal infrastructure permitting.

- 1. The Corps should revise or repeal its Appendix C and discontinue the use of Nationwide Permits for the authorization of impacts to waters associated with pipelines and other large infrastructure projects.
- 2. If not discontinued, the Nationwide Permitting process should be amended to include adequate time for Tribal consultation and the assessment of Tribal impacts.
- 3. Particularly when authorizing impacts to waters associated with major infrastructure projects via Nationwide Permits, Federal agencies should be required to consider whether additional steps or analysis are needed to evaluate and address Tribal impacts. This consideration could include independent evaluation of impacted Tribes and/or the need for additional agency reviews under NEPA or NHPA with the Tribes as cooperating agencies to identify and resolve issues of concern.
- 4. FPISC should better incorporate Federal agencies' obligations and responsibilities to Tribes, and consider whether qualifications for fast-track projects should exclude projects impacting Tribal interests. FPISC should work with OMB on a policy requiring all agencies to comply with trust obligations, treaties, and consultation requirements prior to the approval of an infrastructure project affecting Tribal interests. This policy should also require demonstration that agencies obtained Tribes' free, prior, and informed consent for the project, and the establishment of a Tribal Trust Compliance Officer.
- 5. Federal agencies should proactively consult and coordinate early with Tribes when considering the planning of Federal projects and require free, prior, and informed consent of the Tribe (as stated in the UNDRIP) before proceeding with any project. Federal agencies should facilitate open information sharing for projects under NEPA or NHPA review.
- 6. Federal agencies should consider broadening the cumulative impacts analysis conducted under NEPA to capture off-reservation impacts in areas where Tribes may have sacred sites or treaty rights.

7. Avoidance and protection should be the ultimate goal for Federal agencies, not mitigation. In the alternative, Federal agencies should consult with Tribes to identify culturally appropriate mitigation measures that fully consider the potential risks or impacts to Tribal rights and resources.

Tribes also suggested several legislative actions. These included:

1. Amend NHPA to:

- a. Increase ACHP's authority to enforce its decisions and issue penalties for Federal agencies that fail to comply with NHPA;
- b. Restrict Federal agencies' ability to permit a project if ACHP or other agencies call for additional NHPA-based reviews or consultations;
- c. Include additional cultural resources recognized by Tribes, such as floral, faunal, geological, and water locations Tribes deem significant or sacred;
- d. Include language requiring mitigation of adverse effects and avoiding sacred sites for certification by Tribes to gain project approval;
- e. Include minimum standards for information dissemination to Tribes and protection of confidential Tribal information;
- f. Provide ACHP with a specific role in resolving disputes on areas of potential effect, potential adverse effects on eligible sites, measures required to avoid or mitigate adverse effects, and similar matters;
- g. Allow signatory authority for Tribes on programmatic agreements or memoranda of understanding entered pursuant to Section 106 for off-reservation actions.

2. Amend NEPA to:

- a. Explicitly require carbon impact studies and cumulative impact studies whenever an environmental assessment (EA) or environmental impact statement (EIS) is required; and
- b. Clarify the need to conduct an EIS for crude oil pipeline construction and operation.
- 3. Amend or repeal the Mining Act to prohibit mining conducted on Federal lands, or require additional Federal control over mining conducted on Federal lands.
- 4. Amend the Clean Water Act to close loopholes that allow for pollution of treaty-protected waterways through expansive definitions of the terms "waste treatment system" and "fill material."
- 5. Add a requirement for "mandatory avoidance" of impacts on Tribal resources to every Federal statute that relates to infrastructure project permitting.

6. Enact new legislation to:

- a. Focus specifically on protecting Tribal resources (rather than relying on NHPA);
- b. Provide penalties or other consequences for any Federal agency that fails to engage in government-to-government consultation with a Tribe;
- c. Provide penalties or other consequences for private entities that damage or desecrate Tribal sacred sites;
- d. Strengthen Federal oversight of hydraulic fracturing activities.

We encourage Members of Congress and their staffs to reach out to Tribes in their states for more information on needed statutory changes to address the concerns raised by Tribes during this consultation process.

V. Key Principles and Recommendations

It is clear that Federal agencies can improve how they account for Tribal input in Federal infrastructure-related decisions. The Administration recognizes the need to better account for Tribal input in Federal decision-making on infrastructure projects. This goal is particularly relevant in the infrastructure context: in some circumstances, commencing infrastructure projects prior to adequate consultation may damage Tribal property, degrade Tribal territory, impact Tribal sacred sites, infringe upon Tribal treaty or other rights before the Federal Government fully understands the nature of the Tribal interests at issue, and/or result in project delays, disputes or litigation, and irreparable loss of American historical, cultural, and natural resources.

As such, this Report serves as a first step toward identifying and recommending actions and best practices that Federal agencies can implement to address concerns Tribes expressed through this consultation to improve the nation-to-nation relationship.

A. Key Principles for Consultation and Related Recommendations

A necessary underpinning of the Federal-Tribal relationship is effective communication with Tribes when Federal policies or actions may affect Tribal interests. Federal agencies can minimize subsequent disputes or litigation by broadly interpreting consultation triggers and, when in doubt, inquiring with the Tribe about its interests in a given project. Open, two-way communication respecting Tribal rights, seeking out common ground, and moving forward with consensus solutions is an essential part of the Federal-Tribal relationship. This Report articulates overarching principles that encourage effective communication with Tribes and meaningful consultation practices (Key Principles).

The Key Principles reflect Tribal feedback and should serve as a guidepost for Federal agencies to follow whenever their decisions may impact Tribes and their interests. Proactive, pre-construction consultation during infrastructure projects increases efficiency by mitigating the risk that infrastructure projects run into unforcesen problems, delays, or legal challenges down the road.

1. Act consistently with the government-to-government and trust relationship and treaty rights, and understand the historical context for Tribal interests. Actions by Federal agency leaders and staff should be consistent with Tribal sovereignty and the nation-to-nation and trust relationship between the Federal government and Tribes. Agencies, at both the leadership and staff level, play an important role in upholding that relationship. Regional and local offices of Federal agencies should understand Tribal interests and assess when a Federal action may impact a Tribe in their region, or a Tribe that has historical ties to their region. Those offices should develop expertise on the trust

- relationship, the treaty rights of Tribes in their region, and the historical context for Tribes' interests in lands outside their present reservations.
- 2. Establish staff-level and leadership-level relationships with Tribes. Relationships between Federal and Tribal officials can provide a foundation for effective communication and a meaningful understanding of a Tribe's concerns. Federal-Tribal relationships should be established at all levels—between leadership of agencies and Tribes, and also between staff at the local level of each government. These ongoing relationships will help to ensure that both the Tribe and Federal officials have the appropriate contacts for both staff-level discussions and formal consultation when specific projects are proposed. These relationships also offer the opportunity to assess the effectiveness of past consultations and potential changes for future consultations. These relationships provide Federal agencies the opportunity to work with the Tribe in considering development of a dispute resolution process before there is a breakdown in communication.
- 3. Initiate consultation at the earliest point possible, and provide sufficient information in the invitation. Federal agencies should reach out to Tribes and initiate consultation as soon as they are contemplating a Federal policy or action that may impact Tribal interests. Federal staff should already have an understanding of the Tribal interests, including the historical context, so that they can easily reach out to potentially affected Tribe(s) at the earliest possible moment. An invitation to consult is most effective when it provides Tribes with the information the Tribe needs to determine whether and to what degree its interests may be impacted. Tribes are busy governments that manage many incoming requests, so Federal agencies should provide information as clearly and succinctly as possible, and with as much advance notice as is feasible, to help facilitate Tribes' review.
- 4. Make good-faith efforts to obtain a response from the Tribe and be cognizent of the limits of Tribal resources. A Federal agency sometimes interprets a lack of response from a Tribe as a lack of interest in a project. However, this may instead reflect a failure to contact the appropriate person in the Tribe, that the Tribe has been deluged with similar inquiries from Federal agencies, or that the Tribal official in question is traveling, on sick leave, or otherwise out of the office, or any number of other reasons. Thus, Federal agencies should make several good-faith efforts with the Tribe through appropriate communications (e.g., emails and phone calls). Federal agencies should also be cognizant of limitations on Tribal human and financial resources. Where possible, Federal agencies should coordinate with sister agencies engaged with the same Tribe to identify efficiencies, such as co-locating meetings and consultations. Consultations should be held in Indian country, where possible.
- 5. Ensure Federal decision-makers actively participate. While staff-level dialogue is important, government-to-government consultations should involve the participation of the Federal agency decision-makers whenever possible to allow for on-the-spot problem-solving, dialogue, and appropriate follow up. This approach ensures everyone is in the

- room at the same time, which can prevent subsequent miscommunications and limit the need for follow up meetings to achieve consensus.
- 6. Seek to fully understand Tribal concerns, reach a consensus where possible, and when necessary, explain clearly why Tribal concerns could not be addressed. Tribes explained that consultations they considered "meaningful" occurred when the Federal Government took the time to understand the Tribe and its concerns about a potential Federal decision. Instead of assuming they understand the Tribe's position. Federal agencies should reach out to the Tribe to seek clarification and/or confirmation of the Tribe's views. Federal agencies should work to identify options for addressing Tribal concerns, and should be prepared to adapt to changing circumstances, contemplate creative problem solving, and exhaust every alternative to achieve mutually agreeable solutions. Agencies should explain the legal, practical, and policy constraints on their decision-making. As part of the government-to-government relationship, Federal agencies should respond in a timely manner to Tribal concerns and requests. At the end of the consultation process, Federal agencies should clearly communicate to the Tribe how the agency's ultimate decision addresses Tribal input, rather than just cataloguing the Tribe's concerns. Where the agency is unable to fully address Tribal concerns, the agency should explain its reasoning clearly.
- 7. Exchange information. Federal agencies should provide information about the Federal action being considered and the decision-making process to Tribes and obtain information from Tribes about Tribal interests in a given project. Where appropriate, Federal agencies should work with Tribes to protect the confidentiality of information provided to the Federal Government, and should be transparent about any limitations on their ability to protect confidentiality. Agencies should provide Tribes with key information related to a project, and should not require Tribes to submit Freedom of Information Act (FOIA) requests to obtain information about a project or action the Federal agency is considering.
- 8. Customize the consultation. Not all Tribes operate the same way. Each Tribe has its own customs and traditions, and some Tribes even have their own laws or protocols for Federal-Tribal consultation. Federal agencies should respect Tribal laws or protocols for Federal-Tribal consultation and work with Tribes to customize consultations and communications that respect the sovereign status of each Tribe and enhance Federal-Tribal communication. Effective consultation policies provide for local and regional diversity in working and communicating with Tribes, and allow flexibility for Federal agencies to tailor consultation to fit the needs of specific projects.

Key Principles for Consultation—Action Items:

- 1. Each Federal agency should undertake a thorough review of its Tribal consultation policies and practices to ensure that they reflect the Key Principles.
- 2. Each agency should provide a written analysis of its review to the WHCNAA and post its analysis online by April 1, 2017. The analysis should include a discussion of how its

Tribal consultation policies and practices should be updated to reflect the Key Principles of this document.

3. Any agency finding that its consultation policies and practices are not in line with the Key Principles should develop a plan for amending the agency's governing policy, staffing, and training practices, provide the plan to the WHCNAA, post the plan online, and take other necessary actions to align its policies and practices with the Key Principles.

B. Recommendations for Actions beyond Consultation Policy Updates

Tribal feedback during the infrastructure consultations indicated that updating government-to-government consultation policies is just one step towards an improved nation-to-nation relationship. According to Tribes, the consultation policies are a secondary concern to the way in which Federal agencies implement (or fail to implement) them when Federal decisions impact Tribes and their interests. In order to begin addressing the Key Principles cited above, this Report recommends specific agency action in several areas.

Timing

Tribes raised concerns that they are either not invited to consult or are invited to participate in consultation far too late to have meaningful input in the agency decision-making process. For example, Tribes noted that their opportunity for input on a project has often come well after project proponents have selected a project site or route. To address such concerns, this Report offers the following recommendations to agencies.

Timing—Action Items:

- 1. Each Federal agency involved in infrastructure decision-making should use mechanisms to involve Tribes early in project planning whenever possible. This should include developing procedures that facilitate permit applicants and Tribes working together before applicants make siting decisions or other commitments that impede consideration of alternatives. Federal agencies should use programmatic, landscape-level planning mechanisms to ensure thoughtful and meaningful consultation on infrastructure projects. The Federal Communications Commission (FCC) uses an approach for such interaction that endeavors to ensure that Tribes are notified and have an opportunity to timely consult on the proposed construction of communications towers and antennas in connection with FCC-licensed services. The FCC's model is described in Appendix 6.
- 2. Each Federal agency involved in infrastructure decision-making should develop and implement procedures for consulting with and including Tribes as early as possible in the NEPA and NHPA processes, including pre-decisional scoping discussions with the Tribes. For instance, in 2010, the Bureau of Land Management proactively entered into a programmatic agreement under Section 106 that balanced the protection of historic properties, including an estimated 10,000 prehistoric rock art panels, with energy development. The project highlights the importance and benefits of early consultation and

engagement in project planning of all interested parties, including Tribes. For more information, see Appendix 6. Further, Federal agencies should encourage Tribes to be cooperating agencies for any environmental impact statement.

Scope

Tribes raised concerns about ensuring that the scope of agency analysis for any particular project is broad enough to account for reasonably foreseeable consequences that will flow from the Federal approval, even if the Federal agency's jurisdiction is focused on a narrow aspect of the project. This is a complex topic that requires consideration of the specific legal authorities applicable to individual projects. However, agencies should take the following steps to help address Tribal concerns and to advance the public dialogue on these issues.

Scope—Action Items:

- 1. Federal agencies should work with Tribes to ensure robust indirect and cumulative impacts analysis in the NEPA documents. Indirect effects are causally related to proposals and thus important to decision making. Considering cumulative impacts provides critical context for decisions. Tribal impacts are not necessarily limited to on-reservation activities. Often, off-reservation activities have the potential to impact Tribal resources and reserved rights.
- 2. Federal agencies should consider conducting regional analysis of their actions' potential impacts to Tribal interests, such as Tribal treaty rights or climate change impacts, associated with agency actions.
- 3. Congress should consider whether legislation specific to protection of Tribal resources is appropriate to ensure that Federal agencies are able to fully consider Tribal and other impacts that may flow from their approval of various aspects of infrastructure projects.

Relationship

Building stronger Federal-Tribal relationships is fundamental to better understanding Tribal concerns arising out of proposed infrastructure projects. It can also help mitigate the risk that infrastructure projects run into unforeseen problems, delays, or legal challenges down the road. In response to Tribal comments and recommendations relating to this issue, this Report offers several recommended actions to agencies for strengthening relationships with Tribes.

Relationship—Action Items:

1. Agencies should communicate and work with Tribes to identify areas of concern on an ongoing, non-project specific basis. This ongoing consultation activity would allow local agency decision-makers to know in advance when their decisions will impact Tribal

¹³ See 40 C.F.R. §§ 1508.7, 1508.8(b).

interests. Two good examples for agencies to consider in establishing relationships with Tribes include the Statement of Relationship between the U.S. Fish and Wildlife Service and the Gila River Indian Community, and the Memorandum of Understanding between the U.S. Department of Agriculture and the Great Lakes Fish and Wildlife Commission. Appendix 6 describes both of these partnerships in greater detail.

2. Permitting agencies should proactively work with Tribes and become familiar with Tribal interests and concerns. Permitting agencies should also review their procedures and regulations to determine where there are barriers to earlier and more meaningful Tribal involvement, and amend those authorities to address deficiencies. North Dakota Department of Transportation's work with Tribes and the establishment of the Tribal Consultation Committee described in Appendix 6 provides a good model for Federal agencies to consider.

Education & Training

While the Federal Government has developed some training (see "Working Effectively with Tribal Governments" and "Native American Sacred Sites and the Federal Government"), a need for additional training is apparent. Increased educational and training opportunities for Federal agency staffs that focus on working with and understanding Tribal governments and communities will increase Federal agencies' ability to effectively consult with Tribes. Such steps will also increase the likelihood that Tribal input received during consultation on infrastructure projects has a meaningful impact. This Report identifies several education and training steps for agency implementation.

Education & Training—Action Items:

- 1. Prioritize and make robust training available for all agency staff who may be involved in programs, technical assistance, and decision-making that could impact Tribes. For example, the Corps' Albuquerque District modified its standard practice to recognize Tribal expertise in the geographic area. A new standard practice includes providing culturally sensitive and academically based training to key staff, which uses both Federal and Tribal staff as instructors. See Appendix 6 for more details on this successful partnership. Agencies should also consider developing, with regional and central office staff, expertise on Tribes and Indian law or, at a minimum, have formal arrangements in place that enable agencies to access this expertise when needed. This action can help ensure that even agency staff without training or expertise can readily access agency experts on Tribal issues.
- 2. Each Federal agency should evaluate its existing education and training practices to ensure staff have an appropriate understanding of basic Indian law and policy, treaty rights, and the Federal-Tribal relationship.
- 3. WHCNAA should work with agencies to ensure that appropriate education and training opportunities are made available to Federal employees whose work may impact Tribes. For example, a Federal agency could open certain education and training opportunities to

Federal employees from sister agencies and share information about upcoming trainings dates via the WHCNAA.

4. FPISC should ensure that it has staff with expertise on Tribal issues who can help ensure that Tribal rights are understood and protected by all FPISC agencies. Such steps might include identifying a primary point of contact for FPISC staff who is experienced in Tribal consultation. This individual could be responsible for working with agencies to ensure Tribal rights are considered in infrastructure development on Indian lands, or lands where Indian Tribes hold natural, historic, cultural, or spiritual resources.

Integrating Tribal Input into Existing Processes

Tribes highlighted a need to reform agency processes for integrating Tribal input into Federal decision-making. In response, this Report offers several steps to agencies for incorporating Tribal input into agency decision-making, with special attention paid to the fact that even off-reservation projects can impact Tribes, such as when their ancestral homelands and ceded territories are affected, or when a project could degrade waterways, reserved water rights, or hunting and fishing resources to which Tribes have rights.

Integrating Tribal Input into Existing Processes—Action Items:

- Agencies should review their own internal clearance processes to ensure Departmental
 review processes take Tribal interests into account. For example, the internal review
 process at the U.S. Department of Agriculture requires that the Office of Tribal Relations,
 in addition to the Office of Civil Rights, Office of General Counsel, Office of Budget and
 Policy Analysis, etc. review major rules, notices, and other policy actions that subagencies intend to publish before they are provided to the Secretary's office for final
 review and decision.
- 2. Federal agencies should use the CEQ and ACHP guidance document, "NEPA and NHPA: A Handbook for Integrating NEPA and Section 106" (March 2013), to improve integration of Tribal concerns into the NEPA and NHPA process. Federal agencies should also refer to CEQ's guidance on Non-Federal Cooperating Agencies for information on including Tribes as cooperating agencies. If In that document, CEQ emphasizes that before the scoping process, agencies should identify Tribal governments that may have "special expertise" that may aid in the preparation of the environmental impact statement. Tribes should be solicited to act as cooperating agencies due to their special expertise regarding on-reservation impacts, off-reservation impacts, off-reservation treaty, former treaty, and aboriginal areas. Tribes also provide important input on the development of mitigation measures to ensure these measures are acceptable and culturally appropriate. When a Tribe does not have the resources to be a cooperating

¹⁴ Council on Environmental Quality, "<u>Memorandum for Heads of Federal Departments and Agencies: Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of NEPA," July 28, 1999.</u>

- agency, Federal agencies should continue discussions with the Tribe and provide them adequate information to enable them to engage in the NEPA process.
- 3. Federal agencies should research resources and how methods could be established to make it easier for those agencies to determine which Tribal governments might be impacted by a particular Federal undertaking. Such resources and methods could then help the lead Federal agency to work with the project proponent and develop a notice to the appropriate Tribal governments that would: 1) notify them of the proposed project; 2) identify the area(s) of concern for the project; 3) provide a timeframe for Tribal input or request for consultation; and 4) conduct a meaningful and respectful Tribal consultation. Federal agencies should also establish methods to ensure agency accountability for the consideration, and possible integration of Tribal input into agency decisions.
- 4. When looking at decision-making processes, agencies should consider early and robust Tribal involvement to prevent subsequent delays in permitting and project development resulting from Tribal objections or lawsuits. For example, FPISC could better define how it will engage with Tribes, consistent with FAST-41 requirements. FAST-41 states that the FPISC "shall meet not less frequently than annually with groups or individuals representing State, Tribal, and local governments that are engaged in the infrastructure permitting process." FPISC should work with Tribes in advance of these meetings to identify ways to make these interactions most productive and, based on what is learned, develop a clear framework for regular engagement going forward.
- 5. The Interagency Working Group on Environmental Justice¹⁶ should consider preparing guidance on how to properly analyze infrastructure-related environmental justice impacts on Tribal communities.

Resources & Tribal Capacity

Tribes noted that their own capacity to consult with multiple Federal agencies can be a barrier to participating in meaningful consultation. Additionally, Federal agencies recognize the limits of their own ability to meaningfully consult with 567 federally recognized Tribes in a coordinated, thoughtful, and consistent manner. This Report recommends continued discussion, research, and consultation on how to address these challenges of capacity, resources, and bandwidth.

¹⁵ 42 U.S.C. § 4370m-1(c)(2)(C).

The Interagency Working Group on Environmental Justice facilitates the active involvement of all Federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations.

Resources & Tribal Capacity—Action Items:

- 1. Agencies, OMB, and Congress should look for ways to help Tribes increase their capacity to participate in meaningful consultation. This support could come in the form of new funding streams, training and technical support to Tribes, structures for coordinating consultation across geographies or agencies, and beyond.
- 2. Agencies, OMB, and Congress should consider committing resources to helping Tribes and Tribal Historic Preservation Officers (TPHOs) fully implement their responsibilities under NHPA Section 106.
- 3. Agencies should endeavor to consult with Tribes on Tribal homelands or at a location identified by the Tribe.
- 4. Agencies, OMB, Congress, Tribes, and stakeholders should work to organize and coordinate Tribal consultation practices, procedures, and schedules across agencies in order to reduce the burden on Tribes associated with the need to consult with several different Federal entities.

Specific Agency Actions Underway

Tribes repeatedly raised several specific policy issues throughout the consultation on Federal infrastructure decisions. This Report responds to them here with specific actions agencies are taking to address them.

- 1. Appendix C. The Army Corps of Engineers will update its Appendix C (33 C.F.R. 325) in 2017 in response to extensive Tribal comments calling for Appendix C's rescission or revision. (See "Federal Consultation with Tribes Regarding Infrastructure Decision-Making," transcript taken November 17, 2016, Rapid City, South Dakota, p. 34, lines 7-10, statement of Assistant Secretary of the Army Civil Works Jo-Ellen Darcy, committing to "improve" Appendix C).
- 2. Tribal input under NHPA Section 106. Since so many of the issues raised in the consultation sessions were related to the NHPA Section 106 process, the Advisory Council on Historic Preservation will be releasing in early 2017 a detailed report that outlines specific ACHP responses and recommendations for other agency actions to improve Tribal input in the Section 106 review of infrastructure projects.
- 3. Sacred Sites Protection. The Departments of the Army, Interior, Agriculture, and Energy, and the Advisory Council on Historic Preservation, signatories to the Memorandum of Understanding on Interagency Collaboration and Coordination for the Protection of Indian Sacred Sites, will integrate the findings and tribal recommendations in this report into their work under the MOU.

C. Next Steps for Federal Agencies

To promote interagency accountability for the recommendations made in this Report and to provide structure for ongoing interagency focus on how to improve the Federal infrastructure permitting process, Federal agencies should engage with the WHCNAA and Tribes.

Each of the agencies responsible for infrastructure projects should designate senior career staff representatives to be the primary points-of-contact for coordinating their respective agencies' responses to the Report. These representatives should coordinate with the WHCNAA Executive Director to provide regular updates on the progress of responding to and/or implementing the recommendations. The WHCNAA Executive Director plans to provide a briefing to the WHCNAA Chair on agency efforts to respond to the recommendations included in this Report. The WHCNAA Chair may then discuss the ongoing progress and accomplishments of the agencies with Cabinet members and other WHCNAA members at the first WHCNAA principals meetings of 2017, which is expected to occur no later than Spring 2017.¹⁷

The WHCNAA Executive Director also plans to also coordinate with the White House Office of Public Engagement and Intergovernmental Affairs and the White House Domestic Policy Council on a Federal-Tribal summit where the outcomes of the recommendations will be discussed with Tribal leaders. This discussion could take place at the annual White House Tribal Nations Conference. Ongoing engagement and communications with Tribal leaders on the interagency progress of the Report will be crucial to ensuring that this Report results in sustainable improvements to the Federal infrastructure permitting process.

VI. Conclusion

Tribes experience both benefits and adverse effects from infrastructure projects. Through meaningful government-to-government consultation regarding Federal decisions on these projects, Federal agencies can often maximize the benefits and minimize the adverse effects on Tribes and Tribal communities. Meaningful consultation that takes Tribal interests into account early in the project planning and Federal decision making process can also reduce the likelihood that infrastructure projects encounter unexpected delays that stem from unforeseen disputes and minimize potential delays due to disputes or litigation. This Report encourages Federal agencies to take short-term actions to improve their consultation policies and practices. In the longer term, agencies should work independently and through the WHCNAA to identify and address statutory, regulatory, and policy barriers to soliciting and addressing Tribal input. Through these continued efforts, the Federal Government can improve Federal decision-making processes that affect Tribal lands, resources, and treaty rights to ensure that those decisions are fully consistent with our obligations to Tribes.

¹⁷ Per Executive Order 13647, WHCNAA principals meet at least three times per year.

Appendix 1. Dear Tribal Leader Letter







OCT 1 1 2016

Dear Tribal Leader:

On September 23, 2016, the Departments of the Interior, Justice, and Army, invited you to consult on how, prospectively, Federal decisionmaking on infrastructure projects can better allow for timely and meaningful tribal input. In that letter, we provided some general information on planned locations for the consultation sessions and committed to providing a framing paper with additional detail.

With this letter, we are providing:

- An updated detailed schedule which includes an additional consultation session.
- The framing paper providing background and questions for your consideration.

This information is also available at:

http://www.bia.gov/WhoWeAre/AS-IA/ORM/TribalInput/index.htm.

As a reminder, if you would like to provide written input, please send it by email to: consultation@bia.gov or by mail to: Office of the Assistant Secretary – Indian Affairs, Office of Regulatory Affairs & Collaborative Action, 1849 C Street, NW, MS 3642.* Washington, DC 20240. We will consider all written correspondence received by Friday, November 30, 2016.

We look forward to your feedback as to how our Agencies, and the Federal Government as a whole, can improve Federal decisionmaking processes that affect tribal lands, resources, and treaty rights to ensure that those decisions are fully consistent with our obligations to tribal nations.

Sincerely,

Lawrence S. Roberts Principal Deputy Assistant Secretary - Indian Affairs

Enclosures

*Please note the updated mail stop (MS) number

Appendix 2. Framing Paper

FEDERAL CONSULTATION WITH TRIBES REGARDING INFRASTRUCTURE DECISION-MAKING

FRAMING PAPER

FALL 2016

As discussed in the September 23, 2016, consultation invitation you received, Federal agencies have committed to broad review and consultation on how, prospectively, Federal decision-making on infrastructure projects can better allow for timely and meaningful Tribal input from Federally recognized Tribes. The invitation letter identified two broad questions of particular interest to Federal agencies. Building on those two questions, Federal agencies are interested to learn best practices for Tribal consultation and to ask questions in two broad categories:

- 1) Promoting Meaningful Government-to-Government Engagement within the Existing Framework. How can Federal agencies better ensure meaningful Tribal input into infrastructure-related reviews and decisions, to protect Tribal lands, resources, and treaty rights within the existing framework? This category of questions includes topics related to how a Federal agency implements existing policies and procedures, staff training and expertise, how an agency approaches Tribal consultation, and what can be done to promote Tribal capacity to participate in timely and meaningful consultation.
- 2) Identifying Any Necessary Change to the Existing Framework. Where and when does the current framework present barriers to meaningful consultation? What changes to the current framework would promote these goals? This category of questions includes potential change to regulations, policies, and procedures, as well as statutory changes that would increase timely and meaningful consultation.

These questions are meant to serve as a reference point for participants and are not intended to limit the conversation. We have also included additional questions for your input below, following the background information on the existing framework.

This consultation will focus on how to ensure timely and meaningful Tribal input on future Federal decisions on infrastructure and infrastructure-related projects that have Tribal implications. While infrastructure is difficult to define, for purposes of this consultation, infrastructure projects include, but are not limited to, the examples listed in the text box in the background section.

Infrastructure projects have grown in scope and complexity over time, as reflected in the

increase in number and variety of existing laws and regulations that address infrastructure-related processes. Infrastructure is difficult to define because it encompasses a wide array of physical assets. For example, infrastructure projects include, but are not limited to, the examples listed in the text box on the right.

The Federal Government often plays a role in reviewing these infrastructure projects. There are Federal statutes, regulations and Executive Orders that govern Federal review of infrastructure-related projects or potential impacts of infrastructure; ¹⁸ together, these create a framework that provides designated Federal agencies with the authority and responsibility to review particular aspects of the infrastructure or its impacts.

Examples of Infrastructure:

- Surface transportation, including highway, rail, and transit projects
- Airport capital improvement projects
- · Ports and waterways
- Water resource projects
- Renewable energy generation
- Electricity transmission
- Storm-water infrastructure
- Broadband internet
- Oil or gas pipelines

For example, statutes such as the Native American Graves Protection and Repatriation Act, the National Historic Preservation Act, and the Archeological Resources Protection Act of 1979 contain provisions addressing Tribal input into Federal decision-making under certain circumstances, such as when there will be excavation of cultural items. In addition to the statutes, Federal agencies may also have implementing regulations or guidance that assist with interpreting the relevant statute. In addition to those more specific requirements, there are also Presidential Executive Orders that direct Federal agencies to develop policies and best practices for working with Tribal governments. For example, the Executive Order on Consultation and Coordination with Indian Tribal Governments requires Federal agencies to have consultation policies in place to ensure meaningful and timely input by Tribal officials in the development of Federal policies that have Tribal implications. And under the Executive Order for Improving Performance of Federal Permitting and Review of Infrastructure Projects, Federal agencies are responsible for including best practices for enhancing Federal, Tribal, and State government

¹⁸ The Federal Environmental Review & Authorization Inventory chart, which describes many applicable rules and regulations as well as review requirements, is available at: https://www.permits.performance.gov/tools/federal-environmental-review-and-authorization-inventory. This website also provides background on the Federal "Permitting Dashboard" for certain Federal infrastructure projects.

¹⁹ See the following webpage for a list of consultation policy examples: https://www.whitehouse.gov/sites/default/files/federal agency tribal consultation resources updated.pdf

coordination on permitting and review processes and engaging early in the infrastructure permitting or review process.²⁰

These laws and policies are part of the existing framework for Tribal input. Additional tools that are part of the legal framework are described more fully in Attachment A. We are interested in Tribes' thoughts both on ways to work within this existing framework and ways the framework might be improved.

Promoting Meaningful Government-to-Government Engagement within the Existing Framework

One of the purposes of this consultation is to obtain Tribal input on how the Federal government can more consistently, effectively, and meaningfully engage with Tribal governments on infrastructure-related projects. The existing framework imposes certain requirements and limitations on the Federal role in infrastructure decisions. For example, for certain projects, a Federal agency may only have authority to address a specific aspect of a larger infrastructure project (e.g., approving a right-of-way or a dredge-and-fill permit). In some cases, Federal agencies may not learn of the project until late in the infrastructure development process.

Within the existing framework both Federal agencies and Tribes have considerable discretionary authority as a result of variation in agency regulations and policies. Different agency structures, mission priorities, staffing, resources, cultures, and relationships with Tribes result in Federal agencies taking different approaches when implementing consultation. Despite this variation, both Federal agencies and Tribes have demonstrated the capacity to successfully engage in consultation. For example, the development of the landscape-level Desert Renewable Energy Conservation Plan (DRECP) was a deliberate attempt by numerous Federal agencies to meaningfully engage with Tribes. The DRECP is designed to conserve and manage plant and wildlife communities in the desert regions of California while facilitating the timely permitting of compatible renewable energy projects.

Federal agencies heavily engaged Tribes affected by the DRECP. For instance, prior to formal consultation, the agencies held two summits to address longstanding concerns Tribes had on impacts to traditional use areas and increasing development of energy resources. The agencies then held formal consultation over a three-year period and included extensive outreach and coordination, numerous technical meetings, meetings where Tribes were engaged in creating maps to incorporate into the DRECP, and individual meetings with 40 Federally recognized Tribes. Federal agencies also held conferences and workshops and ensured Tribes were provided with information, maps, presentations, access to executive-level Federal management, funding sources, and other specialized services. Not only did these meetings solicit Tribal input and incorporate Tribal issues into future development planning in the DRECP, the targeted outreach

²⁰ Executive Order 13604 on Improving Performance of Federal Permitting and Review of Infrastructure Projects, March 22, 2012.

led to the exchange of information and discussion of concerns that shaped the actual development of the DRECP.

It is our hope that this consultation on infrastructure decision-making will include discussion of other examples of effective Tribal engagement, and that together we might identify underlying principles common to all meaningful consultations that are achievable within the current statutory framework. Some of these principles may include: 1) accountability for Federal agencies to identify potential impacts on Tribes, 2) providing timely and complete notice to Tribes, and 3) working collaboratively with Tribes to address their concerns or mitigate effects. Among other questions presented, this consultation seeks additional examples of projects that Tribes view as models for successful, meaningful consultations.

To help identify common principles for meaningful Tribal input into Federal infrastructure-related decision making and opportunities for building both Tribal and Federal capacity, we are interested in Tribes' views on the following questions:

- What are examples of consultations on infrastructure projects that you consider to be meaningful? Why did you consider these consultations to be meaningful?
- What factors do you consider when determining whether a consultation on an infrastructure project is meaningful? What should agencies take into account when determining whether or not a consultation is meaningful? What are examples of collaboration (other than formal consultation) that you have found to be useful? Why did you consider these collaborations to be meaningful?
- Are there specific agencies that you find to be particularly good at consultation and what is it about how these agencies go about consultation that makes it stand out?
- What can Federal agencies do to better support Tribes' ability to provide input into infrastructure decisions? What are examples of good practices that enable Tribes to provide their views and input early in the development process or prior to Federal review of an infrastructure project?
- What steps can Federal agencies take to ensure that Federal and non-Federal parties engage meaningfully with Tribes without overwhelming Tribes' resources?

Identifying Any Necessary Change to the Existing Framework

We are also interested in Tribes' views on whether changes to the existing framework – whether to regulations, agency policies, statutes, or other legal requirements – are necessary to ensure meaningful Tribal input into infrastructure-related reviews and decisions.

In considering whether and how changes to the existing framework could result in more successful Tribal consultation, we are particularly interested in Tribes' thoughts on the following questions:

• What are good examples of existing agency policies and regulations that other Federal agencies should consider replicating?

- Does the existing framework afford ample opportunity for Tribal input? If not, what additional opportunities should there be and what would this look like?
- When and where do you currently encounter obstacles to meaningful Tribal engagement that could be addressed through changes to regulation, agency policies, or statute? What are these obstacles and what changes would best address them?

Federal agencies understand that Tribes receive many notices for consultation and requests for input from numerous Federal agencies on various projects. We recognize the cost of participating in this consultation and appreciate your willingness to participate in these discussions and offer candid feedback. As stated earlier, the discussions are not limited to the questions presented here. We welcome any input relevant to the broader topic, and this framing paper and the questions may evolve over the course of the consultation based on Tribal input.

Attachment A Legal Framework For Tribal Input

- Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (November 6, 2000) E.O. 13175 requires Federal agencies to have an accountable process to ensure meaningful and timely input by Tribal officials in the development of Federal policies that have tribal implications. President Obama reinforced this Executive Order in a November 5, 2009 Memorandum entitled "Tribal Consultation." President Obama's memorandum stated his Administration's commitment to "regular and meaningful consultation and collaboration with [T]ribal officials on policy decisions that have [T]ribal implications..."
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994) E.O. 12098 requires Federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental impacts of their actions in minority and low-income populations. Each Federal agency responsibility set forth under the order applies equally to Native American programs. In addition, the Department of the Interior, in coordination with the Interagency Working Group established under the E.O, and after consultation with Tribal leaders, coordinates steps taken under the order that address Federally-recognized Tribes.
- Executive Order 13604, Improving Performance of Federal Permitting and Review of Infrastructure
 Projects (March 22, 2012) E.O. 13604 directs that Federal permitting and review processes must provide
 a transparent, consistent, and predictable path for both project sponsors and affected communities....
 [Federal permitting and review processes] must rely upon early and active consultation with State, local,
 and Tribal governments to avoid conflicts or duplication of effort, resolve concerns, and allow for
 concurrent rather than sequential reviews.
- Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3001 et seq. If there will be excavation of cultural items, including human remains and objects of cultural patrimony from Federal lands, the Federal agency must consult with the appropriate Tribes prior to excavation or removal after inadvertent discovery. If the excavation will occur on "Native American or Native Hawaiian Lands" then NAGPRA requires the consent of the Tribe or Native Hawaiian organization.
- National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 et seq. If an activity could affect historic properties (e.g., properties that are eligible for or included in the National Register of Historic Places), then the Federal agency must engage in "Section 106 review" (as distinguished from a government-to-government consultation) with Tribes that may attach religious and cultural significance to historic properties.
- Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. §§ 470aa-470mm ARPA requires Federal agencies to consult with Tribes before permitting archeological excavations on Tribal lands.

National Environmental Policy Act (NEPA) 42 U.S.C. §§ 4321–4347 – NEPA procedures require public involvement including coordination with Tribes. This coordination should not be confused with a Federal agency's responsibility to engage in government-to-government consultation with Tribes. CEQ guidance encourages more active solicitation of Tribal governments for participation as cooperating agencies in NEPA documents

Appendix 3. Consultation Session Locations and Federal Attendees

| 10/11/2016 | 10/25/2016 | 10/27/2016 | 11/02/2016 |
|---|---|--|--|
| Phoenix, Arizona | Seattle, Washington | Albuquerque, New Mexico | Billings, Montana |
| Listening Session | Tribal Consultation | Tribal Consultation | Tribal Consultation |
| Department of the Interior (DOI): Office of the Secretary, Assistant Secretary for Indian Affairs (ASIA), Bureau of Indian Affairs (BIA), Officer of the Solicitor (SOL), Bureau of Land Management (BLM), Office of Regulatory Affairs (ORA) Department of Justice (DOJ): Office of Tribal Justice (OTJ), Environment and Natural Resources Division (ENRD) U.S. Army: Assistant Secretary for Civil Works (ASACW), Army Corps of Engineers (USACE) Department of Agriculture (USDA): Office of Tribal Relations, Rural Development (RD), | DOI: ASIA, SOL, BLM DOJ: OTJ Army: ASACW, USACE USDA: NRCS, RD Department of Energy (DOE): Tribal Liaison Advisory Council on Historic Preservation (ACHP) Department of Commerce (DOC): National Oceanic and Atmospheric Administration (NOAA) | DOI: ASIA, SOL, BLM, Fish and Wildlife Service (FWS) DOJ: OTJ Army: ASACW, USACE ACHP USDA: NRCS, RD Federal Energy Regulatory Commission (FERC) DOE: Tribal Liaison | DOI: BIA, ASIA, BLM DOJ: OTJ Army: ASACW, USACE ACHP USDA: FS Federal Infrastructure Permitting Improvement Steering Council (FPISC) DOE: Western Area Power Administration Department of Transportation (DOT): Office of the Assistant Secretary for Tribal Government Affairs |
| Natural Resources Conservation Service (NRCS) | USDA: Forest Service (FS) | | Federal Aviation Administration (FAA) |
| 11/10/2016 | 11/15/2016 | 11/17/2016 | 11/21/2016 |
| Old Town, Maine | Minneapolis, Minnesota | Rapid City, South Dakota | Teleconference |

| Tribal Consultation | Tribal Consultation | Tribal Consultation | Tribal Consultation |
|--|---|---|--|
| DOI: SOL, ORA DOJ: OTJ Army: ASACW, USACE ACHP USDA: NRCS, FS FPISC DOE: Office of the Chief Operating Officer (COO) DOT: Office of the Assistant Secretary for | DOI: ASIA, SOL, BLM, FWS, ORA DOJ: OTJ Army: ASACW, USACE ACHP USDA: FS, NRCS, RD DOE: Office of Energy Policy and Systems Analysis FPISC | DOI: ASIA, SOL, BLM, National Parks Service (NPS) DOJ: OTJ Army: ASACW, USACE ACHP USDA: FS, NRCS, RD FPISC DOE: Office of Energy Policy and Systems Analysis | DOI: ASIA, SOL, FS DOJ: OTJ, ENRD Army: ASACW, |
| Tribal Government Affairs | FAA | FAA | ************************************** |
| | DOT: Office of the Assistant Secretary for Tribal Government Affairs | DOT: Office of the Secretary of Transportation, Tribal Transportation Program | Transferring to the state of th |
| To a significance control of the con | Environmental Protection Agency (EPA): Office of Tribal and International Affairs | | The authority of the authors of the |

Appendix 4. Agency Consultation Policies and Related Guidance

U.S. Department of Agriculture

Point of Contact: Office of Tribal Relations

Email: tribal.relations@osec.usda.gov

Phone: (202) 205-2249

Consultation Policies:

Agency-wide Policy: <u>Departmental Regulation 1350-002</u>: <u>Tribal Consultation, Coordination,</u> and Collaboration

Animal Plant Health Inspection Service: <u>Consultation with Elected Leaders of Federally</u> Recognized Indian Tribes

Forest Service: FSM 1500 – External Relations, Chapter 1560 – State, Tribal, County, and Local Agencies: Public and Private Organizations

FSH 1509.13 - American Indian and Alaska Native Relations Handbook, Chapter 10 -

Consultation with Indian Tribes and Alaska Native Corporations

Natural Resources Conservation Service: <u>GM_410_405 Part 405 – American Indians and</u> Alaska Natives

U.S. Department of Commerce

Point of Contact: Office of the Secretary of Commerce/OLIA

Phone: (202) 482-3663

Consultation Policies:

Agency-wide Policy: <u>Tribal Consultation and Coordination Policy of the U.S. Department of Commerce</u>

National Oceanic and Atmospheric Administration: <u>Procedures for Government-to-Government Consultation With Federally Recognized Indian Tribes and Alaska Native Corporations</u>

U.S. Census Bureau: <u>Handbook for Consultation with Federally-Recognized Indian Tribes American and Alaska Native Policy of the U.S. Census Bureau</u>

U.S. Department of Defense

Point of Contact: A. Joseph (Joe) Sarcinella, Senior Advisor and Liaison for Native

American Affairs to the Office of the Secretary of Defense

Email: andrew.i.sarcinella.civ@mail.mil

Phone: (571) 372-6890

Point of Contact: Charles (Chip) Smith, Assistant for Environment, Tribal & Regulatory

Affairs, Office of the Assistant Secretary of the Army (Civil Works)

Email: charles.r.smith567.civ@mail.mil

Phone: (703) 693-3655

Point of Contact: (Army Corps of Engineers): Lisa Morales, Senior Tribal Liaison USACE

Headquarters.

Email: Lisa.T.Morales@usace.army.mil

Phone: (202) 761-7664

Consultation Policies:

DoD and the Military Departments: www.denix.osd.mil/na/policy

DoD Department of Defense Instruction 4710.02: <u>DoD Interactions With Federally-Recognized Tribes (2006)</u>: 4710.03: Consultation Policy With Native Hawaiian

Organizations (2011)

Army: American Indian and Alaska Native Policy (2012)

Marine Corps: Marine Corps. Order 5090: Section 2

Navy: SECNAV Instruction 11010.14A: Department of the Navy Policy for Consultation

With Federally-Recognized Indian Tribes (2005)

Air Force: Air Force Instruction 90-2002: Air Force Interactions With Federally-Recognized

Tribes (2014)

U.S. Army Corps of Engineers: <u>USACE Tribal Consultation Policy</u>

U.S. Department of Education

Point of Contact: Ron Lessard, Chief of Staff, White House Initiative on American Indian

and Alaska Native Education

Consultation Policies:

http://www2.ed.gov/about/offices/list/oese/oie/tribalpolicyfinal.pdf

U.S. Department of Energy

Point of Contact: Chris Deschene, Director, Office of Indian Energy

Email: chris.deschene@hq.doe.gov

Phone: (202) 586-1272

Consultation Policies

Agency-wide Policy: U.S. Department of Energy American Indian and Alaska Native Tribal

Government Policy

Bonneville Power Administration: BPA Tribal Policy

U.S. Department of Health and Human Services

Point of Contact: Stacey Ecoffey, Principal Advisor for Tribal Affairs

Email: consultation@hhs.gov

Phone: (202) 690-6060

Consultation Policies

Agency-wide Policy: U.S. Department of Health and Human Services Tribal Consultation

Administration for Children and Families: <u>Administration for Children and Families Tribal</u> Consultation Policy

Agency for Healthcare Research and Quality: AHRQ Tribal Consultation Policy

Centers for Disease Control and Prevention / Agency for Toxic Substances and Disease

Registry: CDC/ATSDR Tribal Consultation Policy

Centers for Medicare and Medicaid Services: <u>Centers for Medicare and Medicaid Services</u> <u>Tribal Consultation Policy</u>

Health Resources & Services Administration: HRSA Tribal Consultation Policy

Indian Health Service: <u>Indian Health Service Tribal Consultation Policy</u>
National Institutes of Health: National Institutes of Health Guidance on the Implementation

National institutes of relatific inational institutes of relatin Guidance on the Implementation

of the HHS Tribal Consultation Policy

U.S. Department of Homeland Security

Point of Contact: David Munro, Director of Tribal Affairs

Email: david.munro@hq.dhs.gov

Phone: (202) 447-4239

Consultation Policies

Agency-wide Policy: <u>Department of Homeland Security Tribal Consultation Policy</u> Federal Emergency Management Agency (FEMA): <u>FEMA Tribal Consultation Policy</u>

FEMA: Tribal Policy

U.S. Department of Housing and Urban Development

Point of Contact: Rodger Boyd, Deputy Assistant Secretary for Native American Programs

Email: Rodger.J.Boyd@hud.gov

Phone: (202) 402-3326

Consultation Policies

Agency-wide Policy: Government-to-Government Tribal Consultation Policy

U.S. Department of the Interior

Point of Contact: Miles Janssen, Senior Counselor to the Assistant Secretary-Indian Affairs

Email: Consultation@bia.gov Phone: (202) 208-7163

Consultation Policies

Agency-wide Policy: <u>Department of the Interior Policy on Consultation with Indian Tribes</u>
Bureau of Indian Affairs: <u>Bureau of Indian Affairs Government-to-Government Consultation</u>
Policy

Bureau of Land Management: Tribal Consultation Under Cultural Resources

Bureau of Ocean Energy Management: Bureau of Ocean Energy Management Tribal

Consultation Guidance

Bureau of Reclamation: Protocol Guidelines: Consulting with Indian Tribal Governments

National Park Service: Management Policies 2006 (Section 1.11, Page 19)

Office of Surface Mining Reclamation and Enforcement: <u>Tribal Consultation and Protection</u>

of Tribal Trust Resources

U.S. Fish and Wildlife Service: <u>Tribal Consultation Handbook</u>

U.S. Geological Survey: <u>Policy on Employee Responsibility Towards American Indians and Alaska Natives</u>

U.S. Department of Justice

Point of Contact: Tracy Toulou, Director, Office of Tribal Justice

Email: OTJ@usdoj.gov Phone: (202) 514-8812

Consultation Policies

Agency-wide Policy: <u>Department of Justice Policy Statement on Tribal Consultation</u>
<u>Attorney General Guidelines Stating Principles for Working with Federally Recognized Indian Tribes</u>

U.S. Department of Labor

Point of Contact: Jeremy Bishop, Senior Legislative Assistant/Principal Advisor for Tribal

Affairs

Email: bishop.jeremy@dol.gov

Phone: (202) 693-4600

Consultation Policies

Agency-wide Policy: Tribal Consultation Policy

U.S. Department of State

Email: TribalConsultation@state.gov

Arctic Council Chairmanship

Roberta Burns, Office of the Special Representative for the Arctic BurnsRR@state.gov - +1 (202) 647-1009

Erin S. Robertson, Bureau of Oceans, Environment and Science RobertsonES@state.gov - +1 (202) 485-2874

Columbia River Treaty

Kirsten Selinger, Bureau of Western Hemisphere Affairs SelingerKB@state.gov - +1 (202) 647-2256

Democracy. Human Rights, Labor

Lynn M. Sicade, Bureau of Democracy, Human Rights, Labor SicadeLM@state.gov - -1 (202) 647 2362

International Development and Assistance

Brian J. Keane, U.S. Agency for International Development bkeane@usaid.gov - +1 (202) 712-0712, +1 (202) 712-0712

International Whaling Commission

Elizabeth Phelps, Bureau of Oceans, Environment and Science PhelpsE@state.gov - +1 (202) 647-4935

Legal issues

James L. Bischoff, Office of the Legal Advisor BischoffJL@state.gov - + 1 (202) 647 2197

Recovery of Native American Cultural Property

Allison R. Davis, Bureau of Educational and Cultural Affairs

DavisAR@state.gov - +1 (202) 632-6305

Transboundary Infrastructure, Climate Change and Sustainability

Jack Jackson Jr., Bureau of Oceans, Environment and Science (Please note that I will be

leaving my post on January 20, 2017)

JacksonJ3@state.gov - +1 (202) 647 8309

UN World Conference on Indigenous Peoples

Linda Lum – Bureau of International Organizations

LumLL@state.gov - +1 (202) 663 1632

Laure Phipps – Mission to the United Nations

PhippsLL@state.gov - +1 (212) 415-4204

Western Hemisphere Affairs

Zakiya Carr Johnson, Bureau of Western Hemisphere Affairs

CarrJohnsonZS@state.gov - +1 (202) 736-7409

U.S. Department of Transportation

Point of Contact: Deputy Assistant Secretary for Tribal Government Affairs

Email: tribalconsultation@dot.gov

Phone: (202) 366-4573

Consultation Policies

Agency-wide Policy: U.S. Department of Transportation Tribal Consultation Plan

Federal Aviation Administration: American Indian and Alaska Native Tribal Consultation

Policy and Procedures

Federal Highway Administration: U.S. Code Title 23—Highways (Section 135(e)(2) and

(f)(2)(c)

U.S. Department of Treasury

Point of Contact: Beverly Ortega Babers, Deputy Assistant Secretary for Management &

Budget and Point of Contact for Tribal Consultation

William Norton, Senior Advisor for Tribal Affairs (william.norton@treasury.gov)

Email: tribal.consult@treasury.gov

Phone: (202) 622-2200

Consultation Policies

Agency-wide Policy: Department of Treasury Notice of Interim on Tribal Policy

U.S. Department of Veterans Affairs

Point of Contact: Stephanie Birdwell, Director, Office of Tribal Government Relations

Email: StephanieElaine.Birdwell@va.gov

Phone: (202) 461-7400

Consultation Policies

Agency-wide Policy: Department of Veterans Affairs Tribal Consultation Policy

Environmental Protection Agency

Point of Contact: Tribal Consultation Opportunities

Consultation Policies

Agency-wide Policy: EPA Policy on Consultation and Coordination with Indian Tribes

Small Business Administration

Point of Contact: David Sanborn, Assistant Administrator, Office of Native American

Affairs

Email: <u>David.Sanborn@sba.gov</u>

Phone: (202) 401-1580

Consultation Policies

Agency-wide Policy: U.S. Small Business Administration Tribal Consultation Policy

INDEPENDENT AGENCIES AND GOVERNMENT CORPORATIONS

1. Advisory Council on Historic Preservation

Point of Contact: Valerie Hauser, Director, Office of Native American Affairs

Email: vhauser@achp.gov Phone: 202-517-0194

Consultation Policies

Consultation and Coordination with Indian Tribal Governments

Policy Statement Regarding the ACHP's Relationships with Indian Tribes

2. Federal Communications Commission

Point of Contact:

Email: Phone:

Consultation Policies

Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes

3. Federal Energy Regulatory Commission

Point of Contact:

Email: Phone:

Consultation Policies

Tribal Policy Statement

4. General Services Administration

Point of Contact:

Email: Phone:

Consultation Policies

GSA Policy Toward Native American and Alaska Native Tribes

5. National Indian Gaming Commission

Point of Contact:

Email: Phone:

Consultation Policies

National Indian Gaming Commission Policy on Consultation with Indian Tribes

6. Social Security Administration

Point of Contact: Nancy Berryhill, Deputy Commissioner, Office of Operations

Email: Nancy.berryhill@ssa.gov

Phone: (410) 965-3145

Consultation Policies:

Social Security Administration Current Process for Consultation and Coordination with

Indian Tribal Governments

Appendix 5. Detailed Summary of Tribal Input

This section of the Report provides a summary record of comments received via the seven Tribal consultation sessions, listening session, and in the eighty-seven written comments received. These comments reflect the input of fifty-nine Tribes and eight organizations representing Tribal interests. This section organizes the input received into seven broad categories: 1) Tribal Consultation; 2) the National Historic Preservation Act (NHPA) and Section 106; 3) the National Environmental Policy Act (NEPA); 4) FAST Act and the Federal Infrastructure Permitting Improvement Steering Council (FPISC); 5) Mining and Hydraulic Fracturing; 6) Treaty Rights in Infrastructure Determinations; and 6) United Nations Declaration on the Rights of Indigenous Peoples. This record of what Tribes said is not Federal endorsement of the comments received or recommendations provided. See Section V of the Report for the analysis and commentary from the Federal Government on Tribal comments.

A. Tribal Consultation

As noted above, Tribes provided many oral and written comments as a part of the Infrastructure consultations Federal agencies hosted throughout the country. Many Tribes asserted that Tribal consultation is not only required by policy, but required by Federal law, including treaties, which are the supreme law of the land. A few Tribes also advised that, beyond being required by law, meaningful Tribal consultation makes practical sense—specifically, by avoiding late and costly Tribal objections that can lead to administrative appeal, litigation, or public protest. A summary of comments provided that are specific to Tribal consultation is provided below.

1. Need for Improvements, Generally

Tribes uniformly agreed that government-to-government consultations require necessary improvements regarding when and how Federal agencies consult with Tribes. A few Tribes noted that the existing legal framework could be adequate if Federal agencies were to consistently implement consultation requirements in a manner that meets the spirit of "meaningful consultation." (Specifics on what Tribes view as necessary for meaningful consultation are summarized in the following subsections.) Tribes stated they regularly experience inconsistencies in Federal agencies' consultation policies and the implementation of such consultation policies, with some Federal agencies violating their own consultation policies. A few Tribes also noted that some Federal agencies have claimed they are not required to establish their own Tribal consultation policies because they are independent agencies.

Summary of Tribal Recommendations

- Establish a document –a new statute (to last through Administration changes), Executive Order 13175 amendment, a new executive order, OMB guidance, and/or a nationwide programmatic agreement— to:
 - o Establish minimum standards for the development and implementation of consultation policies for all Federal agencies:

- With one definition of government-to-government consultation, but with the flexibility to allow consultation to occur in a manner that fits the uniqueness of each Tribe,
- That requires early consultation, among decision-makers, providing for Federal agencies to proactively address and incorporate Tribal concerns and interests into their decisions through free, prior and informed consent (see specifics in comment summaries below);
- Direct Federal agencies to implement twelve principles and best practices for infrastructure permitting that impacts Tribes;
- Require each Federal agency to draft an "Indian Trust Impact Statement" when an infrastructure project is identified, to assess the Federal trust responsibility in the project, assess any harm or threat to Tribal nor native trust lands, assess any impact to cultural and other resources, including water, and document any consultation and any consent or opposition by Tribes;
- Hold agencies accountable for failing to adhere to consultation requirements and provide enforceable remedies for failure to meaningfully consult (e.g., penalties, a right of action to seek judicial review of consultation);
- o Ensure the protection and confidentiality of Tribal information shared for the purposes of protecting Tribal interests; and
- Reaffirm that Tribes' status, separate from public entities or stakeholders, as having "standing" and required to be engaged at the onset of exploration and throughout the process for any lands impacted by infrastructure proposals, whether governmental or privately held.
- Establish a position to oversee and assist with consultation, such as:
 - o A position within the White House to oversee all Tribal consultation across all Federal agencies;
 - A "Designated Consultation Officer" on a regional level to maintain maps of
 Tribal interests and contacts in the area, work with each Tribe to develop written
 protocols for consultation at the outset of any proposal, maintain a log of
 interactions with Tribes, and provide Tribes with requested information within
 five days; and
 - o Full-time Tribal liaisons who are Native American and dedicated to developing relationships with Tribes and assisting in the consultation process.
- Elevate the WHCNAA to the "White House Council on Native Nations" co-chaired by the Vice President and Sccretary of the Interior, and empower it to resolve policy differences among Federal agencies regarding the application of laws that affect Tribal rights, as a mechanism to resolve differences.
- 2. Trigger for Consultation Identifying the Appropriate Tribes with which to Consult

Several Tribes noted that Federal agencies reach out to Tribes for consultation only if the Tribe's present-day land holdings are impacted; a practice that ignores a Tribe's connections, ties, and the rights they have in ancestral homelands and ceded territories. Many Tribes maintain connections, ties, and rights beyond their present day reservations and land holdings. Federal legislation and policy resulted in mass relocation and removal of many Tribes from their ancestral territories where sacred, archeological, and cultural items and sites remain.

Additionally, several Tribes negotiated treaties with the Federal Government to maintain their rights in ceded territory (e.g., to hunt, fish, gather). A project that affects a Tribe's ancestral homelands or ceded territories may therefore affect the Tribe's treaty rights, sacred sites, and other areas of importance to the Tribes. Moreover, such projects or Federal actions that affect Tribal ancestral homelands may be near or several states away from a Tribe's present day reservation.

Summary of Tribal Recommendations

With regard to what actions Federal agencies must consult on, Tribes recommended:

- Require consultation not just on the Federal Government's own projects, but also when the Federal Government comments on and has a role in reviewing projects, even where the approval process is primarily occurring at the state level (e.g., Sandpiper).
- Adopt a clear and unambiguous policy for identifying which Tribes the Federal agency needs to consult on a particular project, and err on the side of caution by including a Tribe when in doubt.
- Consult and notify Tribes as to Federal projects that affect not only reservation lands but also:
 - Areas within a Tribe's ancestral territory that may not be encompassed within reservation boundaries:
 - Resources, especially water, to which a Tribe may have a treaty right or property interest:
 - O State or national historic sites;
 - o Areas commonly, historically significant to Tribes; and
 - o Cultural landmarks with historic significance to the Tribes.

To help agencies notify and consult all affected Tribes in a timely and accurate manner, Tribes recommended Federal agencies do the following to better identify the territories that each treaty governs, the present-day Tribes that were signatories to each treaty, the ancestral homelands of each Tribe:

- Work with Tribes to map Tribal lands (historical and current) in the area of infrastructure development based on self-identification by Tribes, to facilitate early and effective communication (similar to FCC's confidential, nationwide communication system to expedite infrastructure development while protecting areas of traditional and cultural significance to Tribes).
- Revise existing consultation policy to include research that identifies Tribes' existing land holdings and their treaty and ancestral territory as documented in the historical and archeological records.
- Establish a register of individual Tribes and their associated ancestral migratory territories.

3. Timing of Tribal Consultation

Many Tribes stated that, often by the time a Federal agency engages with Tribes, it is too late for the consultation to be meaningful because the agency has already determined the decision it will reach. Tribes noted that once crucial project components have already been

developed or implemented, Tribal consultation is little more than public notice and comment. One Tribe stated that it feels like an afterthought when Tribes are consulted just weeks before the intended action takes effect because it also appears no time has been left to adjust laws in response to Tribal concerns or suggestions.

Tribes emphasized that early consultation (during the initial planning or pre-licensing phase of the project) is necessary to adequately identify properties of interest to the Tribe and assess the potential impact of the undertaking on the Tribe, Tribal land, and Tribal resources. Tribes noted that failing to include them in the in the planning process, or to assess potential impacts to environmental, historical and ceremonial sites, often results in those sites being destroyed.

A few Tribes noted that state and local agencies are consulted at early stages of a proposal, and asserted that Tribes should be afforded the same respect. Tribes stated that they should be consulted months in advance of new policy or law taking effect, not weeks, because Tribes need time to research, investigate, or prepare responses to the proposal like any other affected agency.

Summary of Tribal Recommendations

- · Require Federal agencies to consult with Tribes "early," meaning—
 - When the agency becomes aware of a proposed project requiring Federal approval;
 - O When a project is identified, before engaging non-government actors;
 - o In the pre-licensing phase; and
 - When setting infrastructure development priorities.
- Impose a specific timeframe on Federal agencies to initiate, such as within ten days of receiving a request, application, or other notification that triggers a consultation requirement.
- 4. Invitation to Tribes to Consult

A few Tribes noted the importance of providing timely notice to a Tribe of consultation. One Tribe stated that two or three weeks' advance notice is not sufficient due to Tribal leaders' schedules. A few Tribes took issue with the form of inviting Tribes to consultation, stating that Dear Tribal Leader letters are generic.

Summary of Tribal Recommendations

- Provide sufficient advance notice (one Tribe specified more than thirty days, on Tribe said ninety days is preferred), that:
 - Includes sufficient detail about the potential scope, purpose, and location of the
 entire project a for a Tribe to evaluate and determine whether it has an interest in
 consultation; and
 - Expressly states that affected Tribes have the right to request consultation before the agency takes any significant Federal action or decision and outline a proposed schedule for how consideration of the project will proceed.
- With regard to the form of the invitation, Federal agencies should:

- O Determine each Tribe's preferred method of communication (or come to an agreement on the method) and correspond with each Tribe accordingly:
- Follow up after the initial notice by email or phone calls (or both) to ensure receipt, confirm the Tribe would like to actively consult, and determine next steps; and
- o Provide notification via USPS, electronic, and telephone contact.
- With regard to written correspondence on infrastructure issues, Federal agencies should:
 - Address correspondence to both the governing body of the Tribe and the THPO;
 and
 - o Make sure Tribal contact information is correct on notices and check at least annually with Tribes for updated information.
- Federal agencies should coordinate with the Tribe on consultation timelines and understand that consultation is ongoing (notification is not a proxy for consultation).

5. Addressing Tribal Input

Many Tribes stated that Federal agencies often treat consultation as a procedural "check-the-box" exercise, in which Federal agencies come to the consultation with their minds already made up and ignore Tribal input. A few Tribes recounted that they have been in consultation sessions in which the Federal agency will listen and agree with the Tribe, but then proceed without accounting for the Tribe's concerns. One Tribe noted the awkward position in which Tribes are placed under current practices: if the Tribe meets with the agency, the agency can claim they consulted regardless of what the Tribe wants, but if the Tribe does not meet with the agency, the agency will push forward with their plans anyway. Another Tribe described current consultation practice as a "one-way street" of communication and an affront to Tribal sovereignty and directly impeding the functioning of Tribal government.

A Tribe noted that one Federal agency in particular will solicit comments then proceed without any indication of how the agency considered the comments or incorporated them into the decision. One Tribe stated that each Tribe has a story about consulting with agencies that do not act on the information Tribes give them, that Tribes spend time and limited resources consulting and then nothing happens, and the project moves forward as if the Tribes did not consult at all. Tribes stated that, in contrast to these current practices, meaningful consultation is a substantive exercise in which the Federal agencies and Tribes comprehensively review the proposal and work together to ensure the ultimate decision protects Tribal interests. Tribes stated that meaningful consultation requires a dialogue between Federal and Tribal partners with a goal of reaching consent, or work toward a compromise.

Summary of Tribal Recommendations

Tribes recommended open discussions and joint deliberations between Federal agency and Tribal partners on a potential project affecting Tribes and emphasized that Tribes must be able to influence the decision made. The recommendations on the extent of the influence varied somewhat:

 Most Tribes recommended requiring free, prior, informed consent, in accordance with the United Nations Declaration on the Rights of Ingenious People (UNDRIP), particularly Articles 11 and 32, so that Federal agencies must obtain the concurrence of the affected Tribe before it takes any action that would negatively impact (or irreparably damage) the affected Tribes traditional lands, waters, treaty rights, resources, cultures, and ways of life.

• One Tribe recommended requiring Federal agencies to "give effect to the maximum extent possible" to the views of the affected Tribes.

Tribes also recommended that Federal agencies be required to:

- Issue a "Statement of Potential Tribal Impacts" that addresses how Tribes could be impacted in any notice on an infrastructure project both on reservation and off-reservation, to ensure that each agency certifies, before the process starts, that it has evaluated how a project might impact Tribal interests.
- Articulate in writing why the free, prior, and informed consent of a Tribe affected by a proposal or policy was not obtained, including a detailed statement of the efforts made by the agency to obtain that consent and the statutory basis for failing to adhere to the Tribes' position.
- Review of any action in the absence of Tribal consent by a Trust Responsibility Compliance Officer (the Secretary of the Interior for projects permitted by other agencies and the Managing Director of CEQ for Interior-permitted projects).
- Treat substantive Tribal input on a proposal for infrastructure as they would the input of any other governmental entity with a jurisdictional nexus to the project.

6. Manner in which Consultation is Conducted

A few Tribes stated that consultations conducted by letter, teleconference, or webinar are not meaningful consultations. One Tribe stated that consultation should occur face-to-face and between Tribal and Federal leadership, unless there are extraordinary circumstances and the Tribe has approved another method. One Tribe recounted that a Federal agency advised them to submit comments during the comment period "like everybody else," even though the Tribe had submitted letters and/or met with Federal officials as part of a consultation.

Summary of Tribal Recommendations

- Provide Federal agencies with adequate time for negotiations with a Tribe relating to how Tribal concerns will be addressed, mitigated, and/or resolved and find a common ground that upholds the Federal trust responsibility.
- Federal agencies should:
 - o Adhere to the Tribe's protocols for consultation if the Tribe has adopted its own;
 - o Engage in face-to-face meetings;
 - o Make every effort to meet in the Tribe's territory;
 - o Regularly consult with Tribes (e.g., quarterly);
 - Work with the Tribe to bring in a mutually agreed-upon mediator, consultants or interpreters, as needed;
 - o Allow adequate time for the Tribe conduct its own studies and assessments; and
 - o Continue consultation until project completion, not just until the 'consultation window' is over; and
 - o Work to build relationships with Tribes and treat them as partners

7. Who Participates in the Consultation

Tribes generally viewed the requirement for government-to-government consultation under Executive Order 13175 as separate and apart from the requirement for consultation with a Tribe (usually with the Tribal Historic Preservation Officer) under Section 106 of the National Historic Preservation Act. Some Tribes noted that Federal agencies sometimes send staff with no discretion to make decisions, rather than decision-makers, to government-to-government consultation. These Tribes emphasized that the decision-maker must participate in the consultation for the government-to-government consultation to be meaningful.

Several Tribes also asserted that Federal agencies cannot legally, and should not attempt to, delegate their obligation to consult to the state (even if the state is carrying out a Federal program), project proponents, their legal team, or consultants.

Summary of Tribal Recommendations

- Require consultation be conducted directly between Tribes and Federal agencies (not to any delegate).
- Consult only with Tribal representatives (governing bodies, councils) who have been authorized to engage in government-to-government consultation by the Tribal government.
- Ensure that Federal participants have actual decision-making authority.
- Work with the Tribe to designate or identify appropriate persons to engage in consultations, such as Treaty Councils or other respected/influential Tribal members to participate in consultation.
- Allow for input from multiple levels, from formal consultation with elected Tribal officials (government-to-government consultation) to less formal, more technical meetings with Tribal staff that are working to understand the project and impacts on the Tribe (e.g., NHPA Section 106 consultation).

8. Federal Agency Staff Understanding

Tribes complained about the lack of understanding among some Federal agency staff, specifically regarding the sovereign status of Tribes and the unique legal relationship the Federal Government has with Tribes (both government-to-government and trustee-beneficiary). For example, Federal agency personnel sometimes group Tribes in with other stakeholders, rather than on a government-to-government basis. Tribes noted that Federal decision makers must come to understand that it is in the national interest to uphold the promises that the U.S. made in treaties, and to exercise discretion consistent with the duties of a trustee to Tribes in every decision that impacts Tribal interests.

Tribes stated that Federal agency staff also lack knowledge in Tribal histories and cultures. For example, one Tribe stated that Federal agency staff need training and an understanding of their Tribal citizens' deep bond to the lands and waters of the Missouri River to provide the basis for understanding who the Tribe is and what Tribal citizens value, as a context

for really hearing what they are saying. Tribes also stated that Federal agency staff need training in their own Tribal consultation policies and how to implement them.

Summary of Tribal Recommendations

- Require training for Federal staff and leadership on:
 - o Tribes;
 - o Treaty rights;
 - o Tribal lands;
 - o Federal trust responsibility;
 - Unique relationship between the U.S. and Tribes;
 - o Federal Indian law;
 - o Federal policy of Tribal self-determination and self-governance;
 - o Consultation obligations;
 - o U.S.'s historical treatment of Tribes and how policies resulted in Tribes having rights and interests in off-reservation areas;
 - o Tribal perspectives on the importance of the trust responsibility and how agency decisions have impacted Tribal rights in the past;
 - O Vast differences among Tribal cultures;
 - Specific information about the particular Tribes in the Federal agency staff's region; and
 - How Federal staff should conduct themselves when meeting with Tribal leaders.
- Include Tribes in the development of any training materials or be offered by Tribes.
- Require an exam similar to the Foreign Service exam for Federal staff working with Tribes to ensure cultural competency.
- Require Federal agency Tribal liaisons to be Native American and be located in all regions, rather than just in DC.

9. Tribal Capacity for Consultation

Many Tribes noted that they do not have the funding or resources to participate in all consultation requests from Federal agencies. A Tribe noted that Tribes must pay to send their representatives to consultations regarding outside threats to their treaty rights and cultural resources, while those valuable resources could have been used to address other important matters.

A few Tribes stated that they are unable to respond to consultation requests simply because of their limited capacity, but advised that Federal agencies should not take a non-response or temporary delay in response to be lack of interest.

Summary of Tribal Recommendations

- Provide Federal funding, or funding from the entity requesting the agency action, for Tribal representatives to travel to consultation meeting sites.
- Promote cooperation, participation and efficiency by combining consultation on common jurisdiction and topics.
- Make more resources available to Tribes to develop the capacity to meet consultation needs in the form of grant funding, capacity-building equipment, manpower, technical

- assistance, or other resources, so that the Tribes may engage the U.S. in a meaningful way.
- Do not assume that a non-response from a Tribe indicates a lack of interest; instead, additional follow up with the Tribe should be required to ensure the Tribe is uninterested in the project or Federal action.

10. Information Sharing in Consultation

Several Tribes noted that one of the purposes of consultation is for the Federal agency to obtain information from the Tribe, and that currently, agencies are not using Tribal expertise and data. These Tribes note that Tribes' unique knowledge could inform Federal decisions, and provide context, information, and perspectives to support informed decisions, including, but not limited to, knowledge about ancestral lands, treaty rights, and traditional areas of cultural and spiritual importance. However, Tribes also noted that they are expected to share their sacred sites and most culturally sensitive areas to the project proponents that may be considered adversaries threatening the sites, and that this contravenes Tribes' religious beliefs.

Tribes stated that Federal agencies sometimes withhold information from Tribes and require them to request access to information through the Freedom of Information Act (FOIA), rather than sharing the information as part of consultation. Tribes recounted Federal agency staff taking weeks and months to provide information needed for the Tribe to prepare for meetings, track progress, or meaningfully consult. Once Tribes receive the information, they are sometimes denied the time necessary to digest the information and provide meaningful responses.

Summary of Tribal Recommendations

- Notify Tribes early (at the outset) of the precise nature of the proposal (not after applications are deemed 100% complete) to ensure cultural and religious sites are properly identified and not disturbed by applicants (see, also, summary of comments on timing of consultation).
- Use Tribal expertise and knowledge.
- Require Federal agencies to develop protocols to ensure Tribal information is kept confidential.
- Consult with Tribes on how to mitigate any damage done to sites.
- Address Tribes' questions about the process and requests for clarification in writing with sufficient detail without requiring "queuing" or typical FOIA procedures.
- Place project reviews on hold until Tribes receive information relevant and central to their decision-making process.
- Provide Tribes with sufficient time to review information (e.g., a minimum of sixty days) and honor Tribes' requests for more time.

11. Accountability for Consulting

Many Tribes noted that Federal agencies bear no consequence for failing to consult with Tribes [and that the private companies bear no consequence for the resulting destruction of

sacred sites]. A few Tribes noted that while some agencies have consultation policies in place, Federal agency staff habitually violate the policies with no consequences.

(See, also, summary of comments on Tribal input, above, for accountability on how Federal agencies consider input provided by Tribes).

Summary of Tribal Recommendations

- Require penalties for Federal staff that fail to consult.
- Suspend an agency that fails to consult and make another agency the lead.
- · Suspend an agency's funding if it fails to consult.
- Tribes must have the opportunity to regularly review and provide comments on the
 efficacy of existing policies. Policies must be amended and improved at the request of
 Tribes.
- Require all agencies, including independent agencies, to comply with consultation policies.
- Add oversight from the White House.
- Federal agencies should take enforcement action (work stoppage, withdrawal of permit, legal action) against private entities or government contractors harming Tribal resources.
- Prevent Federal agencies from moving forward with infrastructure projects when another Federal agency (e.g., EPA, DOI, or ACHP) calls for additional review or consultation.

B. National Historic Preservation Act and Section 106

Throughout the meetings and in the written comments, Tribal leaders and representatives identified many key issues related to the National Historic Preservation Act (NHPA) and the Section 106 regulations of that Act. A primary issue for Tribes is that Section 106 is a *process* and does not provide for—or in any way ensure protection of—Tribal resources (or non-Tribal resources).

Consultation with Tribes is not appropriately defined in the NHPA or Section 106 regulations and has been historically used as a procedural box-checking action. Tribes noted numerous times that "check the box" was a common approach to the Section 106 process by Federal agencies. Tribes also noted that the NHPA fails to address treaty rights (along with other laws applicable to Native Americans). Section 106, requiring a form of domestic consultation, does not require the Federal Government to obtain consent before taking Federal action, and consultation and consent should be required when actions affect treaty lands or resources. Issues related to treaties are discussed in a later section in this Appendix.

Tribes noted that the most problematic projects reviewed under the NHPA involve extractive industries (such as oil, natural gas and mining). Tribes also noted that in too many cases, National Environmental Policy Act (NEPA) reviews are completed without including Section 106 review of cultural resources. They also addressed the issue of the Army Corps of Engineers' (ACE) Nationwide Permit 12, which Tribes assert often circumvents Section 106 of the NHPA.

1. Inconsistent implementation of Section 106 of the NHPA and Delegation of Responsibilities

A common concern that Tribes noted is that Section 106, although a Federal law applicable throughout the U.S. and territories, is carried out inconsistently by Federal agencies, most notably the Army Corps of Engineers. Tribes noted inconsistent application leads to their inability to protect historic properties and traditional cultural properties (TCPs) and to have "meaningful consultation." Different interpretations and definitions result in diminished ability to have input on effects to important places impacted by the entire project.

Many Tribes also noted that a requirement for consensus agreement is needed, rather than the less clearly defined consultation currently in the Section 106 regulations. Other inconsistencies that Tribes noted include:

- While Tribal Historic Preservation Offices (THPOs) are mandated to follow Section 106 procedures closely (such as responding to Federal agencies within established timeframes and having the same status as State Historic Preservation Offices (SHPOs) only on Tribal lands), Federal agencies have different interpretations in what falls within an Area of Potential Effect and assume leeway in implementation of Section 106.
- Federal agencies delegate much of the work under Section 106 to private companies that should be performed by Federal agencies, or a neutral entity, if delegated at all.
- Delegation of the authority to perform and enforce certain Section 106 reviews to states is a problem.

Tribes also noted that the ability for Federal agencies, under the ACHP's regulations, to promulgate individual agency regulations for compliance with Section 106 without Congressional authority, makes such regulations illegal. Programmatic agreements (regarding terms and conditions agreed upon to resolve potential adverse effects of a Federal agency program, complex undertaking or other situations) under Section 106 were also an issue noted by Tribes, due to the common practice of deferring much of the Section 106 review process under these agreements, including consultation. Tribes stated that if programmatic agreements exist, Tribal consultation is still needed.

Many Tribes noted that too many Federal agency representatives they work with have little to no knowledge of Native American histories, cultures or protocols, in addition to lack of adequate knowledge of agency regulations and policies or Section 106 regulations.

Summary of Tribal Recommendations:

- Federal agencies should work with Tribes in the same manner they do with states and local governments.
- Tribes should be involved in the development of nationwide permits and programmatic agreements, ensuring their interests are taken into consideration in the *development* of these broad agreements designed to streamline review processes.
- Better training of Federal staff in their own agency policies and guidelines, as well as of handbooks, Federal law and National Register bulletins, could result in better and more consistent consultation practices government wide.

- Develop a nationwide centralized mapping system (similar to the one used by the Federal Communications Commission, or FCC) to facilitate better inter-agency efforts based on Tribal identification of sacred sites, places of importance, and Tribal territories at the regional level.
- Learn from the FCC model for the development of Nationwide Programmatic Agreements, these documents involve:
 - Early notification to Tribes regarding proposed cell tower sites;
 - O Voluntary Tribal-industry cooperation to address Tribal concerns;
 - Recognition of the appropriateness of industry paying fees to Tribes for their special expertise in the consultation process (as they would with any other consultant).
- Affirmation of the FCC's ultimate obligation to consult with Tribes as requested or necessary.
- Implementing a requirement for ongoing consultation under programmatic agreements, including for mines and dams, and allowing for unexpected or unknown impacts and staged project development would also be useful.
 - 2. Army Corps of Engineers' Consultation Practices and Appendix C

Tribes universally expressed concerns with Appendix C, a Corps regulation governing compliance with the NHPA. In numerous meetings and letters, Tribes called for repeal of Appendix C, noting that the Corps' application of Appendix C does not fulfill the agency's responsibility under the NHPA and is not in compliance with Section 106.

According to Tribes, the Corps' use of Appendix C has been at the heart of many consultation problems, for a number of reasons. A primary concern noted was that Appendix C has not been revised to reflect the 1992 amendments to the NHPA that make Tribal consultation mandatory. Under Appendix C, Tribes *may* be consulted as part of project reviews. Furthermore, the Tribes noted that Appendix C was never approved by the ACHP, which has repeatedly expressed its view that Appendix C is not in compliance with Section 106, and that using Appendix C does not fulfill the Corps' responsibilities under Section 106. Agencies that wish to substitute their own procedures for the Section 106 regulations must receive approval from the ACHP because it is the only agency with congressional authority to issue regulations implementing Section 106. Several Tribes also noted that the Corps' 2005 and 2007 "interim guidance" regarding compliance with the NHPA is insufficient.

Numerous Tribes commented that the NHPA (and Section 106) is more expansive and comprehensive than Appendix C in the identification and consideration of historic properties, including those significant to Tribes. Additional problems with Appendix C that Tribes noted were that it results in disputed findings, uses a narrow definition of "undertaking" and of Area of Potential Effects, results in a lack of input from Tribes, does protect confidential information, and does not address unanticipated discoveries, as required in Section 106.

Numerous Tribes also raised the issue of the Corps' Nationwide Permit General Conditions.²¹ Tribes stated that in their experience, for non-Federal permittees, these General Conditions leave the responsibility of identifying historic properties in the project area to permit applicants. Tribes also noted lack of public notices for projects under these general conditions as a problem.

Summary of Tribal Recommendations:

- Repeal of Army Corps of Engineers current historic preservation compliance processes, "Appendix C."
- Improve how Section 106 is administered, including eliminating Appendix C.
- Amend "Appendix C" to be consistent with 1992 and later Section 106 revisions.
- Eliminate or modify the Corps' Nationwide Permit approach.
- 3. Timing of Consultations and Involvement of Appropriate Representatives

A number of Tribes remarked that too often with infrastructure projects, Section 106 consultation is delayed until late in the environmental review process, after project plans have nearly been finalized and not always as a separate review for historic and cultural resources. At that late juncture, Tribal input becomes a simple "check the box" exercise rather than the meaningful and substantive process that Federal law intends. According to the Tribes, this puts Tribes in a situation where they are seen as obstacles to overcome and put on the defensive, rather than as partners in projects.

Lack of timeliness is due, in part, to the fact that current consultation policies do not adequately define when consultation should begin.²² Tribal governments—at the leadership level—need to be consulted earlier in project review processes to adequately identify historic properties and assess potential impacts of undertakings, just as Federal agencies consult regularly with states, cities and local municipal governments on similar projects. Tribal governments must be extended the same respect and government-to-government consultation.

Contacting Tribes at the mitigation phase, which is often defined as archaeological excavation, is too late. Once an area is disturbed, it cannot be restored, moved or replicated in another place. Therefore, it is incorrect to think that mitigation could later occur through the Section 106 process once an area has been disturbed.

Summary of Tribal Recommendations:

• Begin consultations with high level Federal decision-makers, and continue to involve them at appropriate points throughout the process.

²¹ http://www.nap.usace.army.mil/Portals/39/docs/regulatory/nwp/NWP%20General%20conditions%20(2012).pdf
²² The Section 106 regulations state that Federal agencies need to identify the appropriate SHPO and/or THPO (when on Tribal lands) and initiate consultation with the appropriate officer or officers as one of the first steps in the process. Agency consultation policies, however, may not be as clear.

- Consultation should occur at the Tribal leadership level and on Tribal lands whenever possible.
- Include Tribal governments and leaders during the pre-licensing phase of the process would ensure more comprehensive identification of historic properties and assessment of potential impact of undertakings.
- Require permitting agencies to initiate consultation within a specific timeframe (such as ten days) of receiving a request, application or other notification.
- Extend the current thirty day comment period once notified of a project, giving Tribes more time to respond in an informed manner.
- Notification does not equal consultation; agencies must ensure that consultation efforts extend beyond "Dear Tribal Leaders" letters mailed to Tribes who may be interested in projects, and include phone calls, emails and better outreach.
- ACHP regulations (Section 106) should control/supersede any other agency's regulations in conflict with the ACHP regulations.
- 4. Lack of Authority and Effectiveness of Section 106, Lack of Accountability or Consequences

Tribes repeatedly expressed concern that "Section 106 has no teeth." They noted that ACHP's recommendations are often ignored. They noted that currently, the ACHP is "advisory" in nature, and Federal agencies bear no consequence for failure to consult or comply with Section 106. In general, Tribes noted that stricter penalties are needed and agencies need to be accountable for non-compliance with Section 106.

Summary of Tribal Recommendations:

- Increase ACHP authority to enforce its decisions and/or penalties on Federal agencies for non-compliance with Section 106 (such as those existing in NAGPRA).
- Restrict agencies' ability to permit a project if ACHP (and/or other agencies) call for additional reviews or consultations.
- 5. Signatory Authority of Tribes on Section 106 Agreement Documents

A related issue regarding authority that Tribes raised is the need for Tribes to have signatory authority on all Section 106 agreements where historic properties of importance to Tribes may be adversely affected, including off Tribal lands.

Summary of Tribal Recommendations:

- Provide Tribes with full signatory status requiring agreement with MOUs/MOAs involving projects affecting sites and places of importance to them.
- Require agencies to enter into programmatic agreements with Tribes under the NHPA, and early in the consultation process for major infrastructure projects.
 - 6. Lack of Tribal Involvement in and a Tribally-Directed Section 106 Process

Tribes noted that the Section 106 process is driven by archeologists and their values rather than by Tribes and their knowledge and concerns. Tribes are constantly told by archeologists that places and objects that are sacred or important are not within the Section 106 process (defined as historic properties eligible for or listed on the National Register). This leads to a focus on excavation (data recovery) as the most common form of mitigation and a lack of understanding that cultural resources do not equal archaeological sites. A related issue noted is that consultation is not taught in colleges and classrooms (where archaeologists are trained), but archeologist are intimately involved in the review process.

Tribes also noted that differences exist between what SHPOs consider eligible for the National Register and what Tribes and THPOs consider eligible. Additionally, the Secretary of the Interior standards for professionals working on cultural resources projects ignores knowledge of Tribes, as does National Register criteria, supporting the idea that archeologists are stewards of Native American pasts instead of Tribes, whose expertise is repeatedly dismissed or ignored. Tribal comments noted that the framework upon which the NHPA was built was not meant to incorporate Tribal sources of information and accommodate Tribal values.

Summary of Tribal Recommendations

- Historic properties should be identified in a culturally-sensitive manner, directed by the culture itself and at the Tribal level since each Tribe is unique.
- Incorporate Tribal views on identification and significance into the Section 106 process, including consultations with THPOs and/or Tribes on historical territories (ancestral lands off of modern-day Tribal lands).
- Treat Tribal Historic Preservation Officers with equal authority to others in the Section 106 process.
- Conduct cultural resource surveys with Tribal members and in compliance with Tribal standards.
- Make changes to the NHPA or craft new legislation focused specifically on Tribal resources.
- Modify the NHPA to include additional cultural resources recognized by Tribes, such as floral, faunal, geological and water locations recognized as significant and often sacred to Tribes.
- 7. Inadequate Funding and Capacity for Full Tribal Implementation of NHPA and Section 106

Tribes consistently noted that there is inadequate funding to support the current work of THPOs and to have Tribal monitors present at archaeological sites and ground-disturbing activities. Tribes noted that without adequate resources Tribes cannot fully participate in consultations or the Section 106 process to identify, protect and preserve historic properties.

Summary of Tribal Recommendations:

- Prompt industry to pay fees to Tribes for their special expertise in the consultation process (as they would with any other consultant).
- Develop maps that make it more clear when consultation may be necessary, e.g., FCC Model.

8. Confidentiality and Information Sharing in the Section 106 Process

Several Tribes noted confidentiality and sharing of information in the Section 106 process as areas of concern. Tribes noted that while Section 304 of the NHPA provides a framework for protecting confidentiality, in practice many agencies seem reluctant to follow this framework. Some Tribes noted that clearer guidance regarding confidentiality of information shared is needed and, in general, expressed concern over keeping confidential information regarding sacred sites and other significant places.

Conversely, Tribes also expressed frustration with Federal agencies not providing Tribes with access to information they have on project areas that agencies willingly share with SHPOs and others. According to Tribes, this is an inappropriate invoking of Section 304 (of the NHPA) to keep information about sites from Tribes.

Summary of Tribal Recommendations:

- Modify the NHPA to include some minimum information dissemination standards.
- Provide clear guidance regarding confidentiality of information to agencies.
- Ensure Tribes have access to the same information as SHPOs and others.

9. Sacred Sites

Throughout the meetings and in the letters submitted, Tribes provided a number of examples demonstrating their concern over the disregard for and desecration of sacred sites. These included a substantial list of specific sites Tribes feel have been desecrated and/or threatened by Federal agency actions. Concerns regarding sacred sites fell into a few categories: lack of consequences or accountability, general disregard for sacred sites, different understandings of what sacred sites are, and lack of a landscape-level approach in project reviews.

10. Lack of Consequences or Accountability, and a General Disregard for Sacred Sites

A number of Tribes expressed that both Federal agencies and private companies bear no consequence for allowing destruction of sacred sites, specifically noting that the Corps' Appendix C has led to the destruction of sacred sites. Current practices of the Department of Interior (DOI) also ignore the rights of Tribes regarding ancestral territory and protection of sacred sites (and associated burials and associated funerary objects). The Tribes pointed out that the United States has trust and treaty obligations to protect Tribal lands, waters and sacred places, and that "usual privileges of occupancy" noted in ceded lands include the right to access and maintain traditional sacred sites, among other things. Tribes stated that Executive Order 13007 and the current interagency Memorandum of Understanding (MOU) on sacred sites²³ exist, but are not adequate protection.

²³ http://www.achp.gov/docs/SacredSites-MOU 121205.pdf

Summary of Tribal Recommendations:

- Repeal Appendix C.
- Require agencies issuing permits for infrastructure projects affecting Tribal lands, waters or sacred places to demonstrate Tribal trust and treaty compliance.
- Insert "mandatory avoidance" in every Federal law that deals with infrastructure projects.
- Require regulatory reviews to also include a sacred sites review.
- 11. Differing Understandings of what Sacred Sites are and Landscape-level Approach

Another issue Tribes raised is different understandings between Tribes and Federal agencies about what sacred sites. For example, there is a lack of understanding that cultural resources are not equal to archaeological sites (as noted above), and incorrect assumptions that data recovery is the only mitigation option. Tribes noted that data recovery can destroy the sacredness of a place or some of the characteristics of a place that make it significant because data recovery in and of itself is destructive. Additionally, Tribes stated that sacred sites include land, air and water, which all need to be considered.

A Tribe noted that the definition of "sacred site" in EO 13007 is insufficient because sacred sites should not be narrowly defined vis-a-vis Federal land, but rather vis-a-vis Federal undertakings. The issue of larger TCPs and landscape-level sacred sites not being recognized or acknowledged was also raised.

Summary of Tribal Recommendations:

- Increase training for Federal agency staff on Sacred Sites and places that hold religious and cultural significance for Tribes.
- Create a new definition, or broaden the current definition(s) of Sacred Site (as defined in EO 13007).
- 12. Overlapping Section 106 Concerns: Confidentiality, Delegation of Authority, Lack of Funding

Several issues related to sacred sites specifically mentioned by Tribes overlap with specific Section 106 concerns. One is information regarding sacred sites being kept confidential. And the lack of understanding of "meaningful consultation" results in a "check the box" approach that threatens sacred ancestral territory (among other things).

One example provided is that Menominee sacred sites are greatly threatened, such as places or origin, burial and mound sites, ceremonial dance rings, and village sites, as a direct result of delegation of Federal authority to states, and subsequent non-inclusion of Tribes not in the state but with ancestral lands in that area. The issue of removed Tribes not always being included in consultations was mentioned several times in the meetings and letters.

Additionally, it was noted that the Corps claims it has no budget for review of sacred, cultural and historical sites (along the route of pipelines, for example) and instead defers this task to pipeline companies, which are biased in their reviews because it is not in their best interest to

identify sites that Tribes would want avoided. Related to confidentiality concerns, revealing information about sacred sites to outsiders and adversaries is required in circumstances where non-Federal parties are engaged in the consultation process.

Summary of Tribal Recommendations:

- Amend the NHPA to include language requiring mitigation of adverse effects and avoiding sacred sites to gain project approval, which would be certified by Tribes.
- Create maps, such as the FCC has done, to prompt consultation and protect Tribal sacred places.
- 13. Additional General Recommendations, Solutions and Best Practices Related to NHPA and Section 106

In addition to these general and specific issues and solutions noted by Tribes related to the NHPA, Section 106 and Sacred Sites noted above, a number of general recommendations and potential solutions to improve Section 106 and the NHPA were offered, including:

- Build trust between THPOs, those doing NHPA work and higher officials.
- Improve understanding of cumulative effects and indirect effects--and in a landscape context--in assessment of effects are needed; adding a dedicated paragraph or document on this would be helpful.
- Clarify consultation requirements through an Executive Order, including consultation requirements under the NHPA (and other statutes).
- Use legislation (versus Executive Orders) to fix the foundation of the NHPA.
- Include in Section 106 an inadvertent discovery plan that works for all involved.
- Amend NHPA to provide ACHP with a specific role in resolving disputes regarding the Area of Potential Effect, potential adverse effects on eligible sites, measures required to avoid or mitigate adverse effects, and similar matters.
- Require Land-managing Federal agencies to use their authority under NHPA Section 110 to manage historic properties on Federal lands that hold religious and cultural importance for Tribes in consultation with Tribes, through a type of co-management.
- Expand NHPA Section 106 consultation to include long-term project operations and ongoing maintenance with ground disturbance occurring after projects are completed and allow permitting agencies to impose these obligations on project proponents. Involve and consult with Tribes during the pre-licensing phase to ensure that cultural and religious sites are properly identified and not disturbed by applicants, with confidential information protected.
- Identify historic properties in a culturally relevant manner directed by culture (the Tribes) itself. Require all Federal agencies to make a reasonable and good faith effort to identify historic properties, including consulting with Tribes directly to identify and assess adverse effects through historic properties.

C. The National Environmental Policy Act

Tribes identified a number of problems that impact or shortcut the NEPA review process. First, the Federal Government tends to look at projects in a segmented way. The larger picture

beyond the immediate project area should always be part of any evaluation associated with major proposed developments. An example of where the failure to look at the larger picture creates a problem is the review for crude oil pipelines. The crude oil pipeline review is done in a segmented way, never looking at cumulative impacts of the project as a whole. For example, in the Dakota Access Pipeline review, four different states, three separate districts of the Army Corps of Engineers, and the Fish and Wildlife Service each looked at different parts of the project, but did not coordinate the impacts to Tribes.

In addition to the segmentation of the review causing problems, programmatic EAs and EISs and nationwide permits allow the Federal Government to shortcut the NEPA process and the Tribes pointed out the fact that even small projects have cumulative impacts. When the agencies take the approach that their jurisdiction is only over a small area of any given project (the permit area), this ignores the direct and indirect effects on cultural resources, traditional cultural property, and tangible resources that will occur later on because of the permit approval. Tribes also identified a number of problems with the NEPA documents (draft EISs or draft EAs) provided to them for review. Project proposals or draft NEPA documents often lack specific assessments that are necessary to review project impacts. The reports may not have important impact assessments and in many cases make statements that assessments will be completed in the future. However, the documents do not note when or with what other permitting process this future action will be completed. The prepared documents that Tribes have to review are also highly limited in scope. They do not fully evaluate interdependent activities associated with the proposed actions, or do not fully evaluate all potential effects of a proposed action, leading to inaccurate and incomplete project evaluation. The Tribes are concerned that this limited scope inappropriately biases project review towards project proponents.

Finally, as part of the NEPA review Federal agencies are required to implement the environmental justice requirements of the Executive Order No. 12898. The agencies have a mandate to engage Tribes on the issue of environmental justice (EJ). They are supposed to consider alternatives that would avoid disproportionate and adverse effects on minority Tribal populations and the Tribes do not believe this is happening with the current NEPA review processes. EJ is often applied in name only and Tribal communities are still placed at risk. Part of the problem is that some of the tools and techniques used to evaluate EJ concerns seem designed to address urban settings and don't apply to reservations or rural settings. A half-mile buffer zone may make sense in evaluating the environmental impact for a highway in a city, but it makes no sense to say that a half-mile buffer protects a Tribe in a rural area.

Summary of Tribal Recommendations:

- Prohibit nationwide permits for crude oil pipelines and require a full EIS on all crude oil pipelines that cross aboriginal, historic treaty or reservation lands.
- Create and require regional EAs and EISs, not nationwide ones.
- Legislation should clarify the need for an EIS for crude oil pipelines.
- The existing EO on environmental justice should provide a way to address some problems. CEQ, EPA, and Interior could join together to issue appropriate guidance for all Federal agencies on environmental justice principles for Indian tribes.

- Agencies should follow their own environmental justice policies and use their discretion to deny any projects adversely impacting cultural resources when there is no way to mitigate those environmental justice impacts.
- Agencies should be required to carry out carbon impact studies in EA or EIS documents.
- NEPA should be amended to explicitly require carbon impact studies as part of the analysis and documentation whenever an EA or EIS is required under terms of any agency's NEPA processes and procedures.
- The Federal Government or the project proponent should fund cumulative impact studies for Tribes.
- D. FAST Act and the Federal Infrastructure Permitting Improvement Steering Council (FPISC)

A number of Tribes noted that the recently-passed FAST Act creates an opportunity for FPISC and OMB to include Tribes in efforts to improve Federal permitting processes. Some Tribes offered specific recommendations to accomplish this goal, in particular: (1) including Tribes or a Tribal trust compliance officer on FPISC; and (2) revising the FAST Act process to fully integrate Tribes in the streamlined process in the same way as states and local governments. Some Tribes pointed out that prior Administration materials on improvements to infrastructure permitting in part call out Tribes and Tribal interests expressly, but many Tribes commented that implementation of these efforts have not in practice included Tribes effectively nor recognized the Federal trust responsibility for Tribal lands, resources, and sacred places. Two Tribes also noted that entities have abused expedited procedures governing maintenance, finding ways to expand existing infrastructure under the guise of performing maintenance.

Similarly, several Tribes voiced concern that the "piecemeal" approach to permitting projects has weakened important protections for Tribes with respect to large-scale infrastructure projects. One Tribe noted that the Office of Management and Budget (OMB) has stated that OMB is not subject to consultation requirements, but that should not be the case given OMB's involvement on FPISC as well as OMB's important role in financial and policy-related activity across the executive branch, including the development of infrastructure-related policy.

Summary of Tribal Recommendations

- The qualifications for fast-track projects need to be narrower; any project that adversely impacts Tribes or Tribal interests should automatically disqualify for fast-tracking, or any project that requires consultation should not qualify for fast-tracking.
- The use of fast-tracking should be reviewed regularly to ensure appropriateness.

 Tribes should give informed consent on projects before projects can qualify for FAST

 Act permitting improvement procedures. The "piecemeal" approach to permitting largescale projects needs to be better regulated or eliminated.
- FPISC should consult with Tribes about FPISC's role relative to individual agencies in the permitting process and also about how FPISC will operate. This will ensure that Tribes have information as permitting evolves and can thus provide recommendations about how to include Tribes in the FAST Act process.
- FPISC should develop and recommend to OMB guidance that includes the following:

- All agencies issuing permits for infrastructure affecting Tribal lands, waters, or sacred places must demonstrate compliance with trust obligations, treaties, and consultation requirements and demonstrate informed consent;
- Establishment of a Tribal Trust Compliance Officer on FPISC. The duties of this position should include:
 - Working with impacted Tribes to identify concerns,
 - Building a process, or making better use of an existing process, to ensure Tribal concerns are addressed and resolved by Federal agencies in coordination with the impacted Tribes at the policy level and also on specific projects,
 - Coordinating with Federal agencies to ensure Tribal rights are understood and protected by all agencies involved in permitting discussions and reviews and to adjust timelines for completion of reviews if additional time is needed to resolve Tribal concerns, and
 - Working with agencies to support greater Tribal control over infrastructure development on Indian lands, or lands where Indian Tribes hold natural, cultural or spiritual resources;
- Provision of full and early participation by Tribes in "purpose and need" permitting discussions;
- Recognition of Tribal sovereignty and the role of treaty rights in permitting projects;
- o Environmental justice protections:
- Greater Tribal control over infrastructure development on Indian lands, or lands where Tribes hold natural, cultural, or spiritual resources, including ceded territories;
- o Institutionalization of best practices, including:
 - Early, adequate notice and ongoing information sharing,
 - Consultation in early planning stages,
 - Tribal involvement in mapping efforts,
 - Funding Tribal participation at all stages of permitting processes; and
 - Inclusion of impact statements that evaluate concerns identified by the Tribes and treaty and trust obligations.
- There should be annual, biannual, or quarterly meetings between Federal agencies and Tribal leadership to build the trust relationship, discuss upcoming projects, and address Tribal concerns.
- OMB should follow executive branch consultation requirements.

E. Mining and Hydraulic Fracturing

Many Tribes criticized the Mining Act and asserted that it is not appropriate for private companies to use public land for their financial benefit, without the consideration of alternate values such as preservation of lands and landscapes, the environmental effects of resource depletion or impacts on cultural areas. Tribes asserted that both Tribal and non-Tribal communities often share these concerns. As one Tribe expressed it, consumer demand for new technology like smaller phones leads to big open pit mines at or near cultural areas, without the consideration of the damage done to cultural properties or sacred sites. A Tribe commented that

when mining surveys are conducted on Tribal land or near Tribal communities, Tribes should at least be notified. Another Tribe expressed the view that, in reality, land belongs to a Tribe only until resources are found there, and then the government finds a way to take it away.

Many Tribes commented on the adverse environmental impacts of mining. One Tribe noted that mining can put treaty rights at risk if the mining activity pollutes land or waters where a Tribe holds treaty rights. The Tribes mentioned water pollution most frequently. Several Tribes complained about two loopholes in Clean Water Act (CWA) regulations promulgated by the Army Corps of Engineers and the EPA that they assert allow mines to pollute clean water. The first is a 2002 revision of regulations to expand the definition of "fill material" under section 404 to include contaminated mine tailings, exempting these tailings from CWA rules. The second is a regulation that allows mine developers to designate natural lakes, rivers, streams, and wetlands as "waste treatment systems" exempt from the CWA. Tribes also noted that when a mine destroys a wetland in an area where a Tribe has treaty rights, the wetland mitigation does not always occur in an area where the Tribe has treaty rights, thus diminishing the protection of the treaty resource.

Tribes also questioned whether the EPA or state environmental agencies were performing adequate water quality monitoring, or putting too much trust in self-reporting by companies. Tribes further expressed concerns about spills, and the resulting disruption of ecosystems. Tribes were particularly concerned about pollution from uranium, and the risks of exposure to radioactive materials. One Tribe expressed a view that one agency is biased in favor of uranium mining interests. Although there was not a specific emphasis on air quality in the Tribes' comments, the general concerns about the ways mining activities affect the environment appear to include concerns about air quality. Tribes also expressed concerns that agencies do not consider Tribal interests seriously in the consultation process for environmental permitting relating to mining activities.

Some Tribes expressed concern about the effects of fracking activity on Indian lands, culture, and environment; these were largely similar to concerns expressed in the context of mining. A Tribe commented that the government monitors fracking activities only for immediate environmental impacts, even though they might have long-term impacts as well. Tribes specifically expressed concern that the reinjection of the water contaminates fresh water. A Tribe also asserted that directional drilling affects total dissolved solids in nearby rivers. Tribes also commented that fracking increases the chances of earthquakes. One Tribe expressed concern that fracking wells emit methane gas.

Summary of Tribal Recommendations:

- Repeal or reform the Mining Act, to disallow mining conducted on Federal lands, or allow more government control over mining conducted on Federal lands.
- Close Clean Water Act loopholes through statutory and/or regulatory change.
- Improve enforcement of existing environmental laws.
- Strengthen governmental oversight of fracking activities through legislative action or through Federal or state agency regulation.
- Consider both immediate and long-term impacts of fracking in decision-making.

F. Treaty Rights in Infrastructure Determinations

The overarching theme that Tribes emphasized with regard to Tribal treaty rights was that, absent the consent of the affected Tribe(s), the United States should not authorize any infrastructure project that would negatively impact Tribal treaty rights, sacred sites, or ancestral lands. Tribes emphasized that Federal agencies often treated consultation on treaty rights as a "box to be checked" rather than a meaningful and substantive dialogue between two sovereigns, and voiced their concern that the United States often delegated consultation and decision-making authority on infrastructure projects to state or local governments or private parties.

Tribes were also very concerned with a number of Federal infrastructure permitting processes that they felt undermined Tribal treaty rights and allowed for the pollution of Tribal lands. In particular, multiple Tribes requested that the Corps withdraw Appendix C. These Tribes argued that the Corps implemented Appendix C without congressional authorization or the required approval from the Advisory Council on Historic Preservation, and that Appendix C ignores or contradicts ACHP's regulations implementing the NHPA. Tribes similarly opposed the use of Nationwide Permits to authorize major infrastructure projects (particularly oil pipelines), which Tribes did not believe sufficiently safeguarded treaty rights.

Other comments suggested withdrawing expansive regulatory definitions under the Clean Water Act that allow for the pollution of waterways upstream from Tribal treaty-protected waters. Numerous additional comments were received requesting that Federal agencies provide employees with training about Indian law and the trust responsibility generally as well as region-specific Tribes, lands, and treaties.

Summary of Tribal Recommendations

- Condition Federal infrastructure projects negatively impacting Tribal treaty rights, trust lands, sacred sites, or ancestral lands on the consent of the affected Tribe(s).
- Withdraw 33 C.F.R. Part 325 Appendix C.
- Do not issue Nationwide Permits for activities that can negatively impact Tribal treaty rights.
- Close loopholes in the Clean Water Act that allow for pollution of treaty-protected waterways through expansive definitions of the terms "waste treatment system" and "fill material."
- If an infrastructure project affects tribal treaty rights, the United States must not delegate consultation, permitting, or other decision-making authority to state or local governments or private individuals or corporations.
- Provide Federal agency staff training on Federal Indian law, the treaty system, and the trust responsibility, with staff in specific regions receiving additional training for regional treaties and Tribal rights.

G. United Nations Declaration on the Rights of Indigenous People

A core issue identified during the course of the consultations is the manner in which the Federal Government engages the Tribes in consultation. One of the recurring sub-issues in this

area is the lack of established, government-wide protocols governing the consultation process. In many instances, commenters pointed to the principles set forth in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In 2010, the United States announced its support for the UNDRIP. The UNDRIP provides for consultation and cooperation in good faith with indigenous peoples to obtain their free, prior, and informed consent, through representatives of the Tribe's choosing, before adopting legislative or administrative measures that may affect them. Additionally, the UNDRIP states that where a project affects Tribal lands or territories, the government should provide effective mechanisms for redress, as well as for appropriate measures to mitigate adverse environmental, economic, social, cultural or spiritual impacts.

Summary of Tribal Recommendations:

- Many Tribes referenced the UNDRIP as a good starting point and ready standard that Federal agencies could adopt.
- Some Tribes called on Federal agencies to adopt the UNDRIP principles.
- Some Tribes suggested the existing Executive Order and Presidential Memorandum on consultation be revised to reflect the UNDRIP principles.

Appendix 6. Positive Examples and Innovations that are Working for Tribes and Federal Partners Alike

Through the consultation sessions held across the country and the numerous written comments received, Tribes made note of several examples of agencies, staff, and policies that they like. A few that were mentioned more than once are noted below. They are intended to service as positive examples of steps agencies can take to innovate and change the way they do business, train and manage staff, and think about working with Tribes to the mutual benefit of Tribes, Federal partners, and often other stakeholders too.

A Statement of Relationship that Facilitates Fish & Wildlife Service Consideration of Ecological, Historical, and Cultural Knowledge at the Department of Interior

Recognizing the value of traditional ecological knowledge to the Tribal and Federal land management decision-making process, the Fish and Wildlife Service created a process by which the Gila River Indian Community is encouraged to inform and advise the Fish and Wildlife Service Region about the spiritual and cultural significance of their natural resources and the types of projects that may concern Tribes or impact their resources. This process better enables the Fish and Wildlife Service to incorporate the Gila River Indian Community's historical, ecological, and cultural knowledge into the Federal decision-making process.

The document that facilitates this partnership is a 2016 Statement of Relationship (SOR) between the Southwest Region of the U.S. Fish and Wildlife Service and the Gila River Indian Community in Arizona. The document is intended to promote communication, support a formal consultation process, and strengthen the government-to-government relationship between the Tribe and the Region.

The SOR also establishes protocols for formal communications. These guidelines encourage open discussion to facilitate proactive, cooperative efforts between Tribes and the Federal Government, and include ways to protect sensitive information. Finally, the SOR also facilitates coordination between the Tribe and the Region when there is a request for technical, biological or economic assistance. The text of the SOR can be found on page 72 and 73 of the following document: https://www.fws.gov/mountain-prairie/tribal/documents/Tribal Consultation Guide Apr 2013.pdf

Planting Seeds of Understanding for more Productive Future in the Albuquerque District of the Army Corps of Engineers within the Department of Defense

Tribes manage about eighty percent of the land in the middle Rio Grande Valley. Much of the Army Corps' Albuquerque District overlaps with this area, which includes trust lands, Tribally-owned lands, and aboriginal lands of Tribes. Recognizing the importance of having significant Tribal expertise on staff in the region and modifying their standard procedures to take Tribal interests into account, the Albuquerque District has made the following standard practice—and has received high praise from some Tribes in the region:

- A full-time Tribal Liaison enhances cross-cultural communication by ensuring that Tribal perspectives and values are considered early and often
- Key Corps staff receive both academically-based and culturally-based training using both government staff and Tribal members as instructors; also partner with Pueblo de Cochiti on "immersion" training where participants live and learn at the pueblo for a work week
- New Commanders visit reservations early in their tenure and then regularly to establish and nurture a leadership relationship; staff do the same to ensure day-to-day activities are well coordinated and done in partnership with Tribes
- Tribal and Corps staff brief each other during annual partnership meetings, where they discuss successes and concerns, and plan for future activities---awareness is key to engagement, no surprises, and efficient workload management
- Tribal and Corps staff routinely create programmatic agreements (Federal agencies and Tribes co-sign)
- Corps "culture" includes the expectation that lands and resources are co-managed. Examples of co-management include the management of the natural resources in and around Lake de Cochiti in New Mexico. Other examples of co-management in other regions include a fish hatchery on the Columbia River with the Nez Perce, and wildlife management on the Missouri River with several Sioux Tribes and the Three Affiliated Tribes.

Modeling a Cooperative Relationship with Eleven Great Lakes Tribes and the Forest Service at the Department of Agriculture 1999 Tribal MOU Eastern Area

In the Great Lakes region, a Memorandum of Understanding (MOU) governs the relationship between the USDA Forest Service and eleven Lake Superior Ojibwe Tribes who are members of the Great Lakes Indian Fish and Wildlife Commission (GLIFWC). This MOU emerged in the 1990s, stemming from shared concerns among both Tribes and the Forest Service about the exercise of treaty rights in ceded lands within National Forests. Forgoing a legal battle, Tribal and Federal governmental bodies elected to negotiate a framework by which those rights would be acknowledged, interpreted, and treaty rights implemented. In 1999, after six years of consultation, GLIFWC member Tribes ratified an MOU along with three entities of the Forest Service: the Forest Service's Eastern Region, the Law Enforcement and Investigation Branch, and the Northern Research Station. The MOU encompasses ceded lands in the Chequamegon-Nicolet National Forest in Wisconsin and the Ottawa, Hiawatha and Huron-Manistee National Forests in Michigan. The MOU articulates the Forest Service's recognition of Tribal treaty rights, Tribal sovereignty and the capacity to self-regulate Tribal resources and their use. It acknowledges the Forest Service's role in fulfilling the Federal Government's trust responsibilities and treaty obligations.

The MOU codifies a true government-to-government relationship and establishes a framework for collaboration based on consistent and timely communication and Tribal participation in National Forest decision-making. The MOU also outlines shared goals of protecting, managing and enhancing ecosystems that support natural and culturally relevant forest resources. It also provides a broad framework for a consensus-based consultation process where Tribes have input into decisions affecting the abundance, distribution of, and access to National Forest resources. Although Tribal governments who are signatory to the MOU and the

Forest Service do not always agree, it has been instrumental in providing a forum in which they can interact as co-managers in order to resolve disagreements and coordinate activities.

Further, the MOU lays out a set of mutually agreeable regulations for the exercise of treaty gathering rights and makes clear the fact that Tribes themselves have the right and responsibility to enforce regulations. The citation for the MOU, as amended in 2012, is at the bottom of this page.²⁴

Creating a System for Tribal Engagement through the Tower Construction Notification System (TCNS) at the Federal Communications Commission

The Federal Communications Commission (FCC) developed the Tower Construction Notification System (TCNS) to ensure that all potentially interested Tribes have an opportunity to comment, through the Section 106 process, on the proposed construction of communications towers and antennas in connection with FCC-licensed services.

This system was created in response to national interest in building significant wireless communications infrastructure networks, including cellular towers. The FCC recognized that it needed a process that would ensure that this infrastructure could be built in a timely manner while preserving properties of historical, cultural, religious, and ecological significance to Tribes. The program was designed to ensure FCC permit applicants have a reliable, timely way to get Tribal input and address Tribal concerns as they construct networks and that Tribes have the ability to participate in assessing and mitigating any effects that construction may have. To start, the FCC asked each Tribe to identify its geographic area of interest. With this as the foundation, the FCC created TCNS, a voluntary notice and engagement system.

Through TCNS, as part of proposing an FCC-regulated communications infrastructure project, the project sponsor uses an FCC-created electronic platform to provide potentially affected Tribes with the location and project details of each project. To ensure confidentiality of site and project information, project proponents can view only their own projects, and Tribes can view only projects within their geographic areas of interest.

At the FCC, only the Federal Preservation Officer (FPO) and Deputy, along with a few staff members, may view all TCNS records and correspondence. TCNS supports two-way communication, but Tribes also have the option of responding outside TCNS, either to the project proponent or to the FCC.

The FCC does not consider the use of TCNS by project proponents as consultation with the Tribes. Rather, TCNS is a tool through which Tribes and the FCC can determine whether or not consultation is necessary. In most cases, Tribes do not request consultation, and no

²⁴ https://urldefense.proofpoint.com/v2/url?u=http-

³A www.fs.fed.us spf tribalrelations documents agreements mou-

<u>5Famd2012wAppendixes.pdf&d=DgIFAg&c-y0h0omCe0jAUGr4gAQ02Fw&r=PQMViBrsxINUKzfj8Dxda7GxM</u> HMewl2EiYDwYE6k DM&m=V- pwtBNcoaqmJ6j9wD_jhrESVIIcN2MZ-

xzDwElLSWY&s=X1UlyRLAH2tTHG0jM9M0dzgU3RIVBr5iSvZ7OQ4UCJg&e=

consultation is needed, either because the proposed project raises no concerns or because the Tribe and the project proponent are able to agree on measures that address any concerns (for example, moving the project location or monitoring during ground disturbance). The Tribe's historic preservation staff or Tribal Historic Preservation Officer may ask the FCC's FPO to become directly involved in any Section 106 review. The Tribe may also request formal consultation between FCC management and the Tribal leadership.

Every Tribe has self-identified in TCNS a geographic area of interest based on the Tribe's understanding of its own history and traditions. These areas of interest are typically designated by county or state. Project proponents enter into TCNS the locations of their proposed constructions and other relevant information. On a weekly basis, TCNS sends notices to the Tribes (and the relevant State Historic Preservation Officer) listing all new proposed projects within their geographic areas of interest. At the same time, TCNS provides the project proponents with a list of the Tribes notified for each of their projects. The TCNS weekly notices also inform the project proponents of information that some Tribes have indicated they require in order to complete their reviews through the Section 106 process.

Tribes are encouraged to inform the project proponent whether or not they have concerns about a proposed construction within thirty days of notice. After thirty days, if a project proponent believes that the Tribe has not responded in a timely fashion, it may, after demonstrating active efforts at contact, refer the matter to the FCC staff. The FCC will review the record and make its own effort to engage the Tribe. Depending on the circumstances, the FCC may authorize the project to continue. Project proponents may also refer on a similar basis cases where communication from the Tribe has ceased after an initial response. In general, under the FCC's process, most cases where a Tribe has entirely failed to respond can be resolved within approximately sixty days after submission to TCNS. Under the FCC's rules, unless every Tribe contacted has confirmed it has no further concerns about effects on historic properties, the proponent cannot construct without specific authorization from the FCC. More information on TCNS can be found here: http://wireless.fcc.gov/outreach/index.htm?job=tower_notification.

Model Cooperation among Tribes, the North Dakota State Department of Transportation and the Federal Highway Administration (FHWA) at the Department of Transportation

For the U.S. Highway 2 project in 2000-2001, Tribal elders in the North Dakota area and State DOT archaeologists worked together in the field to identify and avoid sensitive sites, providing a model to address Tribal concerns in future highway projects, and in 2008, North Dakota Department of Transportation employed Tribal monitors in the field with archaeologists. The subsequent NW Williston Bypass project expanded the inclusion of Tribal monitors and employed fifteen Tribal members to identify stone features, delineate site boundaries, plot GPS points, prepare feature drawings, and other tasks.

As part of this process, between 2004 and 2006 a Tribal Consultation Committee (TCC) was developed, initially comprised of eight Tribes (now expanded to 19). The Tribes have drafted a Programmatic Agreement providing efficiencies and opportunities for early Tribal engagement by bringing potential issues to the TCC in advance of the planning and development process for transportation projects, thereby avoiding problems before they are created. This project created a process to fully and efficiently resolve issues where Tribal heritage is

threatened by transportation project planning and development. More information can be found at: http://www.achp.gov/docs/Section106SuccessStory TCC.pdf

Balancing protection of historic properties and energy development in the Nine Mile Canyon through the Bureau of Land Management (BLM) at the Department of Interior

In the early 2000s, energy exploration began in the Nine Mile Canyon area of Utah. Increasing industrial activity and diesel-fueled trucks caused increased erosion of an estimated 10,000 prehistoric rock art panels etched or painted on the walls of the 45-mile canyon. In 2005, the Bureau of Land Management (BLM) released a proposal for an 800-well natural gas development that would dramatically increase traffic and potentially transform some of the area into an industrial zone.

Consultation centered on protecting historic properties, especially the fragile rock art, and resulted in a 2010 Programmatic Agreement that created a blueprint for safeguarding historic properties while allowing energy development to proceed. The Section 106 process balanced protection of historic properties with energy development. The project provides an example of how industry and preservationists can be partner and underscores that consultation must engage all interested parties at the earliest stages of project planning. More information can be found at: http://www.achp.gov/docs/Section106SuccessStoryNineMilev4.pdf

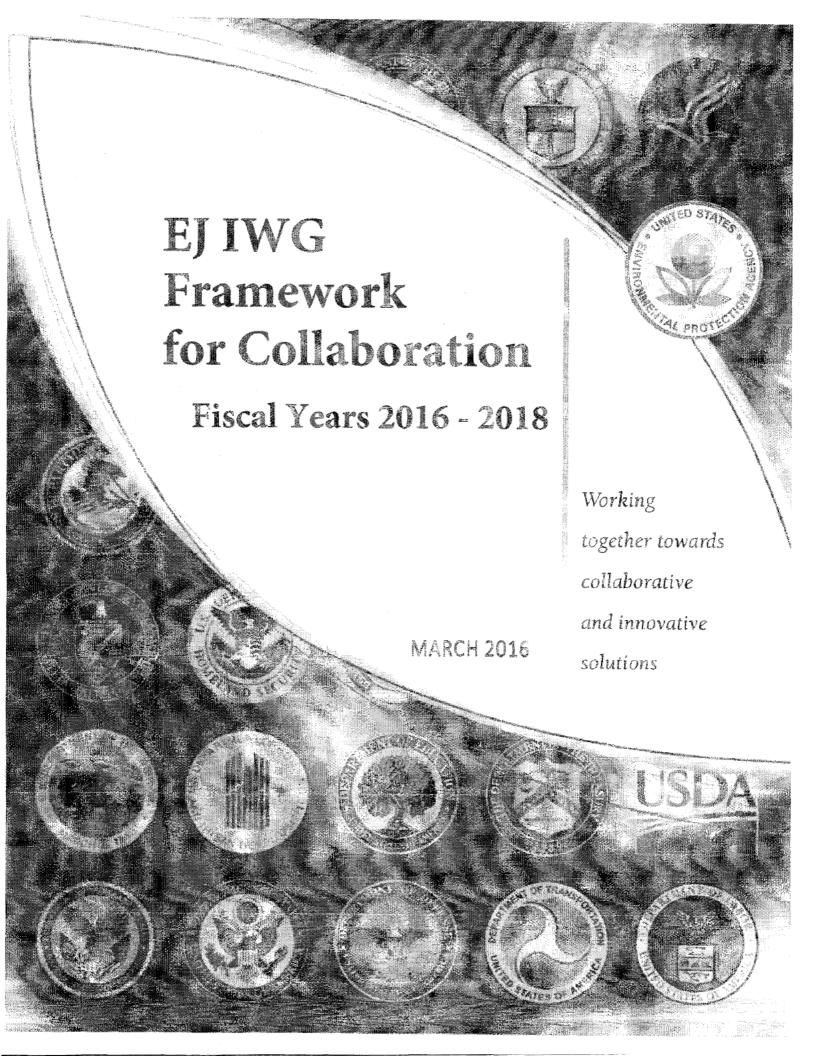


TABLE OF CONTENTS

| INTR | RODUCTION | . 3 |
|-------|--|-----|
| BAC | KGROUND: Federal Interagency Working Group on Environmental Justice | . 4 |
| EJ IV | WG FRAMEWORK FOR COLLABORATION GOALS | . 6 |
| Į, | Enhance communication and coordination to improve the health, quality-of-life, and economic opportunities in overburdened communities | . 6 |
| fl. | Enhance multi-agency support of holistic community-based solutions to provide assistance as needed to address environmental justice issues | . 6 |
| Ш. | Advance interagency strategies to identify and address environmental justice concerns in agency programs, policies, and activities | .7 |
| IV. | Develop partnerships with academic institutions to assist in providing long-term technical assistance to overburdened communities | .7 |
| APP | ENDIX A: Federal Interagency Working Group on Environmental Justice ernance Structure | . 8 |
| APP | ENDIX B: EJ IWG Framework for Collaboration 2016 Priorities | 12 |
| APP | ENDIX C: Annual Progress Report for the Framework | 13 |

INTRODUCTION



The Federal Interagency Working Group on Environmental Justice (EJ IWG) plays a central role in creating healthy and sustainable communities by bringing together the federal family to address critical environmental justice ssues. The U.S. Environmental Protection Agency (EPA) defines environmental justice as: The fair treatment and meaningful involvement of all people-regardless of race, color, national origin, or income-with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

The EJ IWG provides leadership, guidance, and support to federal agencies by:

- Coordinating a focused and concerted effort by federal agencies to directly address the environmental, social, economic, and public health burdens in minority, low-income, indigenous and tribal communities;
- Implementing policies that have measurable impacts on environmental justice;
- Focusing federal agency resources and technical assistance to address disproportionately high and adverse health or environmental effects; and
- · Developing partnerships with colleges, universities, and other organizations outside of the federal government to facilitate long-term support for, and improvement in, overburdened communities.

The EJ IWG Framework for Collaboration (Framework) outlines goals for the next three years that advance greater federal agency collaboration to improve quality - of- life and support economic opportunities in overburdened and under-resourced communities. Increased coordination and cooperation among federal agencies will promote holistic community-based solutions to environmental justice issues and ensure that the public has meaningful opportunities for participation in the decision-making process.

Successful community engagement meets communities "where they are" by employing approaches to outreach and communication that they value and find effective. The EJ IWG listening sessions held across the country between 2011 and 2015 generated numerous public comments that influenced the development of the draft Framework. The draft also underwent a public comment period and the EJ IWG reviewed and considered all of the comments received to develop this final Framework document. The Framework builds upon the earlier work of the EJ IWG and outlines activities, priorities, and resources to strengthen a comprehensive federal approach to improve the health and sustainability of those communities that need the most assistance. As the EJ IWG and its committees implement the Framework, the input received during the public comment period will continue to be incorporated, as appropriate, and the EJ IWG will work to ensure that its community engagement efforts are successful.

major (Completion), regardestinament form that specify deliber. That is one agricultural research and community to the con-Invited Littors and Divention, Discorn-

BACKGROUND:

Federal Interagency Working Group on Environmental Justice

The EJ IWG facilitates the active involvement of all federal agencies to implement Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," (Order)2. The Order states that federal agencies must identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations.

Established by the Order, the EJ IWG provides a forum for federal agencies collectively to advance environmental justice principles. The EJ IWG works as a federal family to assist communities in building the capacity to promote and implement innovative and comprehensive solutions that address environmental justice issues.

The EJ IWG is chaired by the EPA Administrator and includes federal agencies and White House offices. The EJ IWG has standing committees and other committees established as necessary to carry out responsibilities outlined by the Order. The EJ IWG consists of senior leadership representatives, senior staff representatives, and other persons designated by a federal agency. Additional information on the EJ IWG governance structure and a list of agencies can be found in Appendix A of this document.

In 2011, the EJ IWG agencies took a landmark step to support environmental justice by signing a Memorandum of Understanding³ on Environmental Justice and Executive Order 12898 (MOU) and adopting a Charter. The MOU serves as a formal agreement among federal agencies to recommit to addressing environmental justice through a more collaborative, comprehensive, and efficient process. The Charter, revised in late 2014,4 outlines the EJ IWG governance structure which includes the following four standing (permanent) committees:



- Public Participation
- Regional Interagency Working Groups
- Strategy and Implementation Progress Report
- Title VI of the Civil Rights Act

²Executive Order No. 12898, 59 F.R. 7629 (1994): https://www.archives.gov/federal-register/executive-orders/1994.html#12898

Memorandum of Understanding on Environmental Justice and Executive Order 12898 (2011): https://www.epa.gov/sites/production/files/2015-02/documents/clinton_memo_12898.pdf

⁴ Charter for Interagency Working Group on Environmental Justice: https://www.epa.gov/environmentaljústice/charter-interagency-working-group-environmental-jústice

In addition, consistent with the Presidential Memorandum⁵ issued with the Order, and based on public recommendations, every three years the EJ IWG determines if there are additional focus areas for federal agencies to consider and address.



During years 2016 - 2018, the EJ IWG will maintain committees to address the following five focus areas:

- Native Americans/Indigenous Peoples
- Rural Communities
- Impacts from Climate Change
- Impacts from Commercial Transportation (Goods Movement)
- National Environmental Policy Act (NEPA)

Additional information on these committees is found in Appendix A.

⁵ Presidential Memorandum for Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 1994:

EJ IWG FRAMEWORK FOR COLLABORATION GOALS

The EJ IWG developed this Framework, which builds on decades of environmental justice work, to focus the collective efforts of the federal agencies on four goals for years 2016, 2017, and 2018:



C. Cruden

- Enhance communication and coordination to improve the health, quality-of-life, and economic opportunities in overburdened communities;
- II. Enhance multi-agency support of holistic communitybased solutions to provide assistance as needed to address environmental justice issues;
- III. Advance interagency strategies to identify and address environmental justice concerns in agency programs, policies, and activities; and
- IV. Develop partnerships with academic institutions to assist in providing long-term technical assistance to overburdened communities.

Outlined below are a few ways the EJ IWG committees will work to achieve the goals over the next three years.

- Enhance communication and coordination to improve the health, quality-of-life, and economic opportunities in overburdened communities
 - Enhance community outreach to provide greater public access to federal information, resources, and trainings;
 - Increase public access to and understanding of data, mapping, and assessment tools to address environmental justice issues; and
 - Maximize opportunities for federal agency leadership to consider stakeholder feedback.



- II. Enhance multi-agency support of holistic community-based solutions to provide assistance as needed to address environmental justice issues



- Enhance community capacity building by sharing lessons learned, promising practices, and resources;
- Identify and leverage federal resources to address environmental challenges and build sustainable community infrastructure; and
- Foster federal interagency collaboration on a regional, state, tribal, and local level through various outreach efforts and other activities.

- III. Advance interagency strategies to identify and address environmental justice concerns in agency programs, policies, and activities
 - Increase community awareness of federal agency environmental justice strategies and goals to get feedback that assists the federal family in implementation;
 - Identify opportunities to highlight interagency community solutions to help advance implementation of federal environmental justice policies and guidance; and
 - Improve implementation of federal environmental justice policies and guidance by creating appropriate benchmarks.



Deputy Secretary of Transportation, Victor Mendez

 Develop partnerships with academic institutions to assist in providing long-term technical assistance to overburdened communities



Natural Resources & Environment

Improve technical assistance to overburdened communities by leveraging programs such as the College/Underserved Community Partnership Program (CUPP):

Encourage enhanced training from federal agencies to academic institutions, particularly minority serving academic institutions and tribal colleges and universities, in areas such as grant writing and access to federal resources organized by community issues, rather than federal agency; and

Develop internship opportunities for college students in overburdened communities to enhance the knowledge base of the communities and to educate college students on the conditions in overburdened communities.

APPENDIX A: GOVERNANCE STRUCTURE

EJ IWG Federal Agencies

- Environmental Protection Agency (Chair)
- Department of Agriculture
- Department of Commerce
- Department of Defense
- Department of Education
- Department of Energy
- Department of Health and Human Services
- Department of Homeland Security
- Department of Housing and Urban Development

- Department of Interior
- Department of Justice
- Department of Labor
- Department of Transportation
- Department of Veterans Affairs
- General Services Administration
- Small Business Administration
- White House Office: Council on Environmental Quality

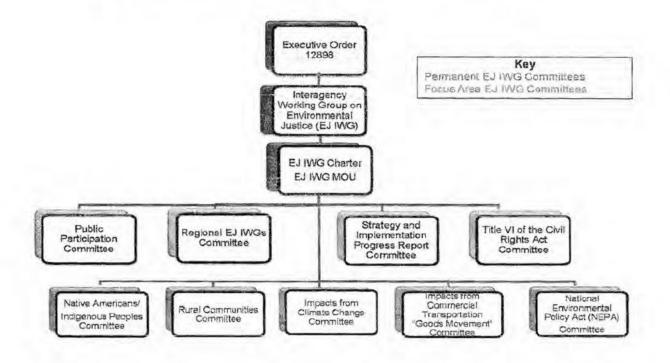
The EJ IWG responsibilities and authority to act on environmental justice issues are established by Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," with two accompanying documents: 1) the 2011 Memorandum of Understanding on Environmental Justice and Executive Order 12898 and 2) the Charter for the Interagency Working Group on Environmental Justice. Both documents are available at:

http://wwwil.ena.gov/environmenta/justica/interposity/responses/infl-

The chart below outlines the committee structure and focus areas for the EJ IWG. The Charter created the Permanent committees listed in green. Consistent with the MOU, at least every three years, the EJ IWG will, based in part on public recommendations identified in annual progress reports, identify important areas for federal agencies to consider and address, as appropriate, in environmental justice strategies, annual implementation progress reports, and other efforts.

APPENDIX A: GOVERNANCE STRUCTURE (CONT'D)

EJ IWG Governance Structure 2016 - 2018



December 2015

EJ IWG STANDING COMMITTEES

(PERMANENT, Displayed in green on the Governance Chart)

| COMMITTEE NAME | PURPOSE OF COMMITTEE |
|--|--|
| Public Participation | Increases transparency, language accessible outreach and addresses technological barriers. Develops listening sessions and opportunities for public input. Facilitates collaboration and public participation with federal agencies and external stakeholders. Utilizes traditional means of communication and social media to build participation. Helps coordinate responses to public input. |
| Regional Interagency Working Groups | Provides targeted and coordinated technical assistance; develops relationships between federal field and regional staff; and develops best practices for prioritizing environmental justice concerns. Develops community resource materials. Strengthens education, training, and/or engagement on environmental justice among local and state agencies. |
| Strategy and Implementation Progress Report | Serves as a resource for federal agencies as they review, update, or develop their environmental justice strategy, and the annual implementation progress reports. Works with agencies to help coordinate programs, policies, and activities. Coordinates EJ IWG Senior Leadership meetings. Manages implementation of the EJ IWG Framework for Collaboration and standard operating procedures. |
| Title VI of the Civil Rights Act | Serves as a resource to help agencies connect their civil rights enforcement responsibilities with their other efforts to achieve environmental justice. |

EJ IWG AD HOC COMMITTEES

(AD HOC, Displayed in light blue on the Governance Chart)

| COMMITTEE NAME | PURPOSE OF COMMITTEE |
|--|---|
| Native Americans/Indigenous Peoples | Facilitates effective coordination and collaboration of federal agencies in identifying and addressing issues of environmental justice that are of concern to federally recognized tribes, indigenous peoples (including state recognized tribes, tribal members, indigenous community-based organizations, Native Hawaiians, Alaska Natives, American Indians), and others living in Indian country. |
| Rural Communities | Supports efforts to: ensure collaboration between federal agencies and rural environmental justice communities, develop economic opportunities so rural overburdened communities are self-sustaining and economically thriving, and coordinate federal agency investments to further holistic community-based solutions that reduce environmental justice issues. |

EJ IWG AD HOC COMMITTEES

(AD HOC, Displayed in light blue on the Governance Chart)

| COMMITTEE NAME | PURPOSE OF COMMITTEE |
|---|--|
| Impacts from Climate Change | Supports collaboration across federal agencies and with communities with environmental justice concerns around climate change-related issues including facilitating consideration of vulnerable populations in agency climate adaptation activities; providing information, services, and data to help make communities more resilient; providing relevant tools, systems, and policies to communities and businesses to mitigate impacts on natural resources and human health due to climate change; and ensuring two-way communication around climate-change related issues. Implements the Educate, Motivate and Innovate (EMI) Project. |
| Impacts from Commercial Transportation "Goods Movement" | Serves as a resource to coordinate with other federal agencies on reducing environmental and health effects of commercial transportation and supporting infrastructure ("goods movement") that impact low-income, minority and tribal populations (overburdened communities). Ensures that overburdened communities have greater opportunities to access benefits from federal efforts related to goods movement. |
| National Environmental Policy Act (NEPA) | Improves effective, efficient and consistent consideration of environmental justice principles in the NEPA process by sharing promising practices and lessons learned developed by federal departments and agencies. |

APPENDIX B: 2016 PRIORITIES

The Framework spans a three-year timeframe. The 2016 priorities are a snapshot of the activities planned for implementation by the end of October 2016. The EJ IWG will produce an annual EJ IWG Framework for Collaboration Progress Report and increase opportunities for public input and engagement with the EJ IWG.

Collaboration

- Identify, highlight, and replicate, where possible, successful community-based models that leverage federal investments, technical assistance, and community-based resources; use the EJ IWG website and other appropriate methods to share these success stories with stakeholders.
- Increase collaboration and leveraging of resources for capacity building, economic investments, and research (e.g., climate, traditional cultural resources) in rural communities.
- Improve the effective, efficient, and consistent consideration of environmental justice issues in the National Environmental Policy Act (NEPA) process by promoting the use of Promising Practices for EJ Methodologies in NEPA Reviews.
- Promote awareness of and solutions to community-based environmental challenges associated
 with Goods Movement (commercial transportation of freight and supporting infrastructure) in
 and through overburdened communities and communities enduring adverse health impacts as
 a result of goods movement.

Community Resources

- Issue and post on the EJ IWG home page a memorandum to federal funding recipients on how
 Title VI of the Civil Rights Act of 1964, as amended, applies to federally funded activities that
 have an impact on the environment and human health; use other appropriate methods to
 share the information provided in the memorandum with communities.
- Update and post on the EJ IWG home page a Community-Based Federal Environmental Justice Resource Guide and Directory and make the document available in multiple languages; use other appropriate methods to share the resource guide and directory information with communities.
- Post on the EJ IWG home page an Annual Framework Progress Report and the annual agency Environmental Justice Implementation Progress Reports; use other appropriate methods to share the information in these reports with communities.

External Communications and Outreach

- Through traditional and electronic communication methods, select EJ IWG Committees intend
 to conduct trainings, webinars, or presentations on EJ IWG focus areas to inform, engage, and
 provide community residents and stakeholders an opportunity to provide feedback.
- The Public Participation Committee (PPC) will identify opportunities to increase transparency and address the linguistic, cultural, and technological barriers that exist between federal agencies and overburdened communities.
- The PPC will focus on prioritizing in-person outreach efforts through community visits and public dialogue sessions that solicit feedback from residents directly experiencing environmental impacts. The PPC will also explore opportunities to add state and local government engagement dialogue sessions as part of existing agency community outreach efforts.

APPENDIX C: ANNUAL PROGRESS REPORT FOR THE FRAMEWORK

The EJ IWG will post annual progress reports (i.e., 2016, 2017, and 2018) on the EJ IWG website https://www.apa.gov/environmentatilistice/federal-interagency-working-group-environmental-Justice-ej-lwg) to share its progress in implementing the EJ IWG Framework for Collaboration. In addition, each federal agency will include relevant Framework highlights in their annual Environmental Justice Implementation Progress Reports posted in accordance with the 2011 Memorandum of Understanding⁶ on Environmental Justice and Executive Order 12898.

⁶ Memorandum of Understanding on Environmental Justice and Executive Order 12898 (2011):

SEND COMMENTS TO EJSTRATEGY@EPA.GOV



Eederal Interagency Working Group on Environmental Justice









The EJ IWG helps to ensure that the federal government is

ACCESSIBLE

Easily reached by communities, advocates, and other stakeholders regarding environmental justice concerns;

AWARE

Knowledgeable of the environmental justice concerns and issues facing communities in order to facilitate collaboration and coordination; and

ACCOUNTABLE

Capable of explaining the actions and decisions related to the implementation of Executive Order 12898

Creating Change through Collaboration

Established by Executive Order 12898, the Federal Interagency Working Group on Environmental Justice (EJ IWG) comprises 17 federal agencies and White House offices that work together to advance environmental justice principles across the federal government, to engage and support local communities in addressing environmental and human health impacts, and to promote and implement comprehensive solutions to environmental justice concerns.

Guiding Principles of the EJ IWG

The EJ IWG provides leadership, guidance, and support to federal agencies by:

- coordinating a focused and concerted effort by federal agencies to directly address the environmental, social, economic, and public health burdens in minority, low-income, indigenous and tribal communities;
- implementing policies with measureable impacts on environmental justice;
- focusing federal agency resources and technical assistance to address disproportionately high and adverse health or environmental effects.

For more information, please consult the EJ IWG Framework for collaboration (https://www.epa.gov/environmentaliustice/ei-iwg-framework-collaboration), which outlines the fiscal years 2016-2018 goals to advance greater federal agency collaboration to improve the quality-of-life and support economic opportunities in overburdened and under-resourced communities.

EJ IWG Highlights

The EJ IWG plays a central role in creating healthy and sustainable communities by bringing together the federal agencies, state, local and tribal governments, educational institutions and community stakeholders to address critical environmental justice issues. Examples include the College/Underserved Community Partnership Program (CUPP), federal grants and funding opportunities, and the Educate, Motivate, Innovate (EMI) climate justice initiative.

The College/Underserved Community Partnership Program

promotes interagency collaboration and community engagement with local colleges and universities. CUPP provides opportunities for government agencies to partner with local colleges and universities to address environmental justice concerns and provide free technical assistance to communities. Through these partnerships, students gain practical experience and earn course credits while communities and government agencies benefit from the collaborative efforts to address environmental and human health impacts.

Community Spotlight:

Savannah State University is working with the Coastal Commission of Georgia to assist students in small cities, such as Riceboro and Midway, to develop designs for sustainable buildings and improvements to water infrastructure systems.



Arthur Blazer (USDA) tours Dine College, a community college serving the Navajo Nation.

Educate, Motivate, Innovate (EMI) Climate Justice

Initiative started by the EJ IWG, in collaboration with the White House, highlights the needs of vulnerable populations, particularly those related to climate resilience and adaptation. The initiative supports federal conversations and actions on climate change, which are informed by and responsive to the needs of communities with environmental justice concerns.

This initiative aims to engage the next generation of climate justice leaders by expanding partnerships with Minority Serving Institutions, including outreach to Historically Black Colleges and Universities and Tribal Colleges and Universities.



EMI participant engages with community members during air quality testing.



following their presentations at the 2016 NEC EMI workshop, the student participants meet with representatives from the EPA, DOE and various stakeholders.

Community Spotlight:

The EJ IWG hosted an EMI workshop at the 2016 National Environmental Justice Conference (NEJC), which featured presentations on climate justice projects from students attending Minority Serving Institutions. Students were able to share their work and gain valuable insight from other professionals and activists in the environmental justice movement.

Federal Grants and Funding Opportunities provide communities with valuable resources to develop, implement and sustain long term development projects that address community needs in meaningful and equitable ways.

To learn more about federal grants, visit: http://www.grants.gov/

Community Spotlight: Friends of Valle de Oro National Wildlife Refuge, Los Jardines Institute, and Mountain View Neighborhood Association are collaborating to write the first site-specific "Environmental and Economic Justice Strategic Plan" (EEJSP) for Valle de Oro National Wildlife Refuge using a community based process that will match Refuge goals and missions with the needs of the community.

Funding from three sources - the EPA's Environmental Justice Small Grant and Urban Waters Grant and the DOI's Fish and Wildlife Service Urban Refuge Partnership Grant - is being leveraged to complete the strategic plan, which when complete, will be the first public land site in the nation with a Strategic Environmental Justice Plan.

The project uses surveys, dialog with community leaders, public outreach, and training to establish baseline community knowledge around environmental and public health concerns and the relationship between the Refuge and sustainable solutions to the concerns, and to raise awareness of the Refuge and its development and encourage community participation. The Refuge serves as a model for the DOI for the incorporation of Urban Refuge Standards of Excellence and the development of new Urban National Wildlife Refuges nationwide.



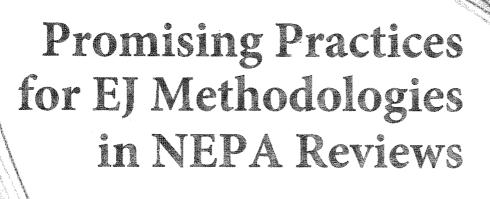
Valle de Oro National Wildlife Refuge during their 2016 "Abrasos- A Community Celebration of Environmental Justice Day" event.



The Properties of Fathers

And the second of the second o





Report of the Federal Interagency Working Group on Environmental Iustice & NEPA Committee

MARCH 2016

Working
together towards
collaborative
and innovative
solutions

West priors

A NEPA Committee and EJ TWG Document

This material is not intended or offered as legal advice. It is non-binding, informal, and summary in nature, and the information contained herein does not constitute rules or regulations. As such, it is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, that are enforceable at law by any party, in any criminal, civil, or administrative matter.

NEPA COMMITTEE PARTICIPANTS

Committee Co-Chairs

- Suzi Ruhl, US EPA
- · Helen Serassio, US DOT

Education Subcommittee Co-Chairs

- Arthur Totten, US EPA
- Brian Collins, US DOI

Community of Practice Subcommittee Co-Chairs

- · Stanley Buzzelle, US EPA
- Andrew Zacker, US HHS

U.S. Department of Agriculture

Animal Plant Health Inspection Service:

- · Wendy Hall, wendy.f.hall@aphis.usda.gov
- Eileen Sutker, eileen.sutker@aphis.usda.gov
- · Michelle Gray, michelle.l.gray@aphis.usda.gov
- Fan Wang-Cahill, fan.wang-cahill@aphis.usda.gov
- Phillip Washington, phillip.washington@aphis.usda.gov
- David Bergsten david.a.bergsten@aphis.usda.gov

U.S. Department of Energy

- Denise Freeman denise.freeman@hq.doe.gov
- Eric Cohen*, eric.cohen@hq.doe.gov
- Steven Miller, steven.miller@hq.doe.gov
- Brian Costner, brian.costner@hq.doe.gov

U.S. Department of Health and Human Services

- Andrew Zacher, andrew.zacher@hhs.gov
- Capt. Edward Pfister*, edward.pfister@hhs.gov
- Laura Annetta*, laura.anetta@hhs.gov
- Everett Bole, Everett.bole@foh.hhs.gov

U.S. Department of Homeland Security

- Lisa Quiveors, lisa.quiveors@hq.dhs.gov
- Jennifer Hass, jennifer.hass@cbp.dhs.gov
- David Reese*, david.reese@hq.dhs.gov

U.S. Department of Housing and Urban Development

- · James Potter, james.m.potter@hud.gov
- * Individuals no longer participating on the EJ IWG or NEPA Committee due to retirement or change in duties.

Forest Service:

- · James Smalls, jsmalls@fs.fed.us
- Tasha LoPorto, tloporto@fs.fed.us



Fish and Wildlife Service

National Park Service

Doug Wetmore, doug_wetmore@nps.gov

N

Bureau of Land Management

- Robert Winthrop, rwinthro@blm.gov
- Thomas Bartholomew*, tbarthol@blm.gov
- Hilary Zarin, hzarin@blm.gov

U.S. Department of the Interior

Bureau of Reclamation

Cathy Cunningham, ccunningham@usbr.gov

U.S. Department of Justice

- Cynthia S. Huber, cynthia.huber@usdoj.gov
- · Brian Collins, brian.m.collins@usadoj.gov
- Barbara Marvin, barbara.marvin@usdoj.gov
- Ayako Sato*, ayako.sato@usdoj.gov

U.S. Department of State

- Mary Hassell, hassellMD@state.gov
- Genevieve Walker*, walkerg@state.gov
- Jill Reilly, reillyJE@state.gov

U.S. Department of Transportation

- Helen Serassio, helen.serassio@dot.gov
- Katie Grasty*, katie.grasty@dot.gov

Federal Transit Administration

- Maya Sarna, maya.sarna@dot.gov
- Faith Hall, faith.hall@dot.gov

Department of Veteran Affairs

Catherine Johnson, catherine.johnson?@va.gov

Federal Highway Administration

- Harold Peaks, harold.peaks@dot.gov
- Carolyn Nelson, carolyn.nelson@dot.gov
- Sharlene Reed*, sharlene.reed@dot.gov

U.S. Environmental Protection Agency

Office of Environmental Justice

- Suzi Ruhl, ruhl.suzi@epa.gov
- Stan Buzzelle, buzzelle.stanley@epa.gov

Office of Federal Activities

- · Arthur Totten, totten.arthur@epa.gov
- Ellen Athas, athas.ellen@epa.gov
- Julie Roemele, roemele.julie@epa.gov
- Cliff Rader* , rader.cliff@epa.gov

Regional Offices

- Grace Musumeci, musumeci.grace@epa.gov
- Nikolaus Wirth, wirth.nikolaus@epa.gov
- Reggie Harris, harris.reggie@epa.gov
- Ntale Kajumba, kajumba.ntale@epa.gov
- Alan Walts, walts.alan@epa.gov
- Elizabeth Poole, poole.elizabeth@epa.gov
- Dana Allen, allen.dana@epa.gov
- Thomas Kelly, kelly.thomasp@epa.gov

^{*} Individuals no longer participating on the EJ IWG or NEPA Committee due to retirement or change in duties.

U.S. General Services Administration

- Carol Schafer, carol.schafer@gsa.gov
- Katrina Scarpato, katrina.scarpato@gsa.gov

U.S. Nuclear Regulatory Commission

- Jeffrey Rikhoff, jeffrey.rikhoff@nrc.gov
- Emily Larson*, emily.larson@nrc.gov

White House Council on Environmental Quality

• Cecilia De Robertis*,

(b) (6



^{*} Individuals no longer participating on the EJ IWC or NEPA Committee due to retirement or change in duties.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

Federal agencies should ensure recipients of federal financial assistance engaged in the NEPA process comply with Title VI in addition to fulfilling the requirements of NEPA. A separate Title VI analysis may be necessary. For guidance on Title VI compliance, consult with your Agency's Office of Civil Rights or the Civil Rights Division of the Department of Justice.

Table of Contents1

| Preface | | 6 |
|---------|---|-----|
| I. | Meaningful Engagement | 8 |
| II. | Scoping Process | 2 |
| III. | Defining the Affected Environment | š |
| IV. | Developing and Selecting Alternatives 18 | 8 |
| V. | Identifying Minority Populations2 | 1 |
| VI. | Identifying Low-Income Populations2 | 6 |
| VII. | Impacts Analysis 2 | 9 |
| VIII. | Disproportionately High and Adverse Impacts 3 | 8 |
| IX. | Mitigation and Monitoring 4 | . 7 |
| NEPA | and EJ National Training Product 5 | 1 |

¹Similar to the NEPA process itself, the Report is intended to be non-linear in nature. While each section of the document has been arranged to loosely mirror a linear progression, in actual practice, these steps are often overlapping and interrelated.

Preface

The Federal Interagency Working Group on Environmental Justice (EJ IWG) established the NEPA Committee in 2012 pursuant to the <u>Memorandum of Understanding on Environmental Justice and Executive Order 12898 (2011)</u>. The Memorandum identified the National Environmental Policy Act (NEPA) as an area of focus for inclusion in the agencies' environmental justice efforts and directed efforts to "include interagency collaboration." The NEPA Committee seeks to improve the effective, efficient and consistent consideration of environmental justice issues in the NEPA process through the sharing of best practices, lessons learned, research, analysis, training, consultation, and other experiences of federal NEPA practitioners.

Promising Practices for EJ Methodologies in NEPA Reviews, an EJ IWG report produced by the NEPA Committee (hereinafter referred to as "Promising Practices Report") represents the professional experience, knowledge, and expertise of the individuals participating in the NEPA Committee. The NEPA Committee (see List of NEPA Committee Participants from ten departments, three agencies, and one White House office) spent almost 48 months researching, analyzing and discussing the interaction of environmental justice and NEPA. The Promising Practices Report is a compilation of methodologies gleaned from current agency practices identified by the NEPA Committee concerning the interface of environmental justice considerations through NEPA processes. The EJ IWG and NEPA Committee hope that this compilation will disseminate promising environmental justice practices across the federal government so that we can learn from one another about effective ways to build robust consideration of environmental justice into our NEPA practice. This document draws from existing environmental justice and NEPA Guidance developed by White House Council on Environmental Quality (CEQ) and federal agencies, but is not and should not be considered formal guidance.

The forward-looking promising practices methodologies are derived from examples of actual agency practices that were presented by one or more agencies during the multi-agency NEPA Committee meetings. These examples were used by the NEPA Committee participants to generate approaches that federal agencies can consider for understanding environmental justice in the context of the NEPA process. For purposes of this document, the NEPA Committee looked at instructive examples from current practice, and where helpful or relevant, attempted to extract useful lessons learned from those examples. The NEPA Committee has also produced a National Training Product which includes information on specific examples that align with the *Promising Practices Report* for training purposes.

Accordingly, the *Promising Practices Report* sets forth these promising practices as a way of presenting a variety of methodological approaches and a broad overview of options that may be suitable across various NEPA process scenarios, but not as agency requirements or guidance. Information in the *Promising Practices Report* is intended to provide flexible approaches for agencies as they consider environmental justice in NEPA activities. The *Promising Practices Report* does not establish new requirements for NEPA analysis. It is not and should not be viewed as formal agency guidance, nor is the compilation of promising practices intended to be legally binding or create rights and benefits for any person. It is intended, however, as a way for agencies to compare and improve their methodologies for considering environmental justice now and in the future by applying methods established in federal NEPA practice. In that regard, the joint efforts of the NEPA Committee reflect the community of federal NEPA practitioners who seek to facilitate reasonable consideration of environmental justice within the context of NEPA.

The EJ IWG and NEPA Committee hope that their efforts provide the groundwork for a renewed and dynamic process to advance environmental justice principles through NEPA implementation and thereby promote a more effective, efficient, and consistent consideration of environmental justice during NEPA reviews.

I. MEANINGFUL ENGAGEMENT

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- For purposes of consistency with Executive Order 12898, <u>Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations</u>, the terms "minority populations²" and "low-income populations" are used in this document.³ Within these populations, there are residents, community leaders, and organizations, among others.
- 2. This document, a compilation of federal NEPA practitioner promising practices, is not formal guidance. It merely provides agencies with recommendations for conducting environmental justice analyses for NEPA reviews. As such, the document is not intended to modify NEPA, the CEQ NEPA regulations, or any agency's NEPA implementation regulations, or impose any requirements beyond what NEPA and Executive Order 12898 require of agencies.
- 3. In order to meaningfully engage minority populations and low-income populations and other interested individuals, communities, and organizations, agencies may consider (as appropriate) encompassing adaptive and innovative approaches to both public outreach (i.e., disseminating relevant information) and participation (i.e., receiving community input) since minority populations and low-income populations often face different and greater barriers to engagement.
- 4. Meaningful engagement efforts with potentially affected minority populations, low-income populations, and other interested individuals, communities, and organizations are generally most effective and beneficial for agencies and communities when initiated early and conducted (as appropriate) throughout each step of the NEPA process.
- Meaningful engagement efforts for potentially affected minority populations, lowincome populations, and other interested individuals, communities, and organizations can play an important role in leveraging agencies' ability to collect



² See "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity" at https://www.whitgliouse.gov/omb/federal-1597sgandards/:

See also e.g. "U.S. Environmental Protection Agency's "Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples" at <a href="https://www.epa.gov/or/balichs-policy-environmental-justice-ej-working-seedgased---bes-and-tribes-an

³ Agencies use their discretion to define the range of individuals and/or groups to which they will extend environmental justice analyses within their NEPA process. This report recognizes there are a variety of agency approaches to conducting environmental justice analyses and terminology, and so for consistency, it uses the wording, "minority populations and low-income populations" throughout this document.

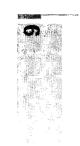
data used to inform the decision-making process.

- 6. Maintaining relationships with affected minority populations, low-income populations, and other interested individuals, communities, and organizations throughout the NEPA process via an agency-designated point of contact can be an effective means of facilitating meaningful engagement.
- 7. Convening project-specific community advisory committees and other established groups to identify potential impacts and mitigation measures (as part of the NEPA review process) comprised in part of potentially affected minority populations and low-income populations can enhance agencies' understanding of the proposed action's potential impacts and alternatives, and can be a valuable public participation strategy, designed to further inform an agency's decision-making process.
- 8. Providing minority populations and low-income populations, and other interested individuals, communities, and organizations with an opportunity to discuss the purpose and need statement early in the NEPA process can help focus public input. Explaining the purpose and need for agency action to the minority populations and low income populations early in the NEPA process can help focus meaningful engagement (i.e. public outreach and participation) efforts. (See also section 4.1-4.2, p.20)

Specific Steps

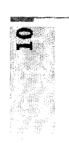
As appropriate, agencies can consider the following actions:

- 1. Consider conducting early and diligent efforts to meaningfully engage potentially affected minority populations, low-income populations, and other interested individuals, communities, and organizations (as appropriate) when: 1) defining the affected environment; 2) identifying potentially affected minority and low-income populations; 3) assessing potential impacts to minority and low-income populations; 4) assessing potential alternatives; 5) determining whether potential impacts to minority populations and low-income populations are disproportionately high and adverse (See also section 8, p.40); and 6) developing mitigation and monitoring measures. Engaging the community during appropriate key steps in the NEPA review can inform an agency's decision-making process. Agencies may benefit by communicating agency objectives for the proposed activity.
- Consider identifying and addressing (as appropriate) concerns such as any cultural, institutional, geographic, economic, historical, linguistic, or other barriers to achieve meaningful engagement with potentially affected minority populations, low-income populations, and other interested individuals,

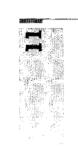


communities, and organizations.

- 3. Agencies can be informed by soliciting and considering input on the proposed action and alternatives (as appropriate) from each segment of the minority population or low-income population that may potentially be affected (e.g., minority-owned small businesses, low-income transit riders, subsistence fishers).
- Consistent with applicable requirements, agencies should conduct meaningful engagement efforts and government-to-government consultation efforts (as appropriate) specifically designed to reach indigenous tribal populations and organizations.
- 5. Throughout each step of the NEPA process (as appropriate) consider the use of electronic communications (e.g., virtual meetings, webinars, social media, Listserv). This method of communication may not be effective for some populations, and its use could be discussed in conjunction with other methods of communication that are viable. Throughout each step of the NEPA process (as appropriate) consider choosing meeting locations, meeting times, and facilities that are local, convenient, and accessible to potentially affected minority populations and low-income populations, and other interested individuals, communities, and organizations, which includes holding some meetings outside of traditional work hours and locations.
- 6. Consistent with applicable requirements, agencies should prepare NEPA documents in plain, clear language and provide multiple forms of communication (e.g., written, oral, pictorial) to accommodate varied levels of reading proficiency, to facilitate meaningful engagement, and to account for limited English proficiency (LEP). Also, consider (as appropriate) providing interpretation and translation services at public meetings.
- 7. Consider documenting and explaining the steps taken throughout the NEPA process (as appropriate) for agencies' public outreach and public participation actions or decisions (e.g., how minority populations and low-income populations were identified and how barriers to involvement were identified and addressed). Providing these explanations can be helpful to both an agency's decision-making process and the community's understanding of the NEPA process.
- 8. Consider providing notice to the public (as appropriate) of the meeting date(s) and time(s) well in advance and through methods of communication suitable for minority and low-income populations (including LEP populations) to accommodate the schedules of minority populations and low-income populations, and other



interested individuals, communities, and organizations. By considering mandatory minimum time requirements between advance notification and meetings that may exist (e.g. time requirements for tribal consultations) an agency can more effectively establish schedules for public notice.



II.SCOPING PROCESS

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- 1. A broad cross-media perspective of affected resource topics analyzed in the NEPA document (e.g., water resources, land use, air quality) during scoping may help ensure potential human health and environmental effects on minority populations and low-income populations are considered within the scope of the NEPA review. Agencies can be informed by an understanding that minority populations and low-income populations may have increased or unique vulnerabilities from multiple impacts in one or more environmental resource topics or from cumulative impacts, and that the extent of the affected environment may vary for each resource topic addressed in the NEPA document.⁴
- 2. Agencies may wish to conduct several small scoping meetings for minority populations and low-income populations to foster more participation and substantive discussions (e.g., community members may feel intimidated by large public meetings and formal discussions). If more than 15-20 people are in attendance, breaking into discussion groups may improve the effectiveness of the meeting.
- 3. Prior to the scoping process, it may be beneficial for agencies to develop a written strategy to identify, notify, and solicit input from potentially affected minority populations and low-income populations for agencies to consider in determining the scope of the NEPA review. Self-identified minority populations and low-income populations can be included in this process.
- 4. Due to the broad nature of programmatic assessments, certain site-specific environmental justice methodologies described within this section may not be directly applicable. For some programmatic assessments, the scope may be regional or national.

Specific Steps

As appropriate, agencies can consider the following actions:

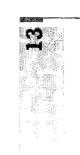
 Consider conducting a preliminary screening analysis at the beginning of the scoping process to determine whether minority populations and low-income



⁴ See US EPA, Factors for kleatifying and Addressing Discreparitionals having and Recids Impacts (2007); Supplemental American Journal of Public Addressing Vol. 101, No. S1 (Dec 2011).

populations may be present and could be affected by the proposed action. A webbased Geographic Information System tool (e.g., EJSCREEN) can be used to help identify the location and concentrations of minority populations and low-income populations.

- If the preliminary screening process identifies a potentially affected minority population or low-income population, agencies may benefit by conducting the remainder of the scoping process in consideration of the potential unique characteristics and vulnerabilities of the minority populations and low-income populations.
- 3. To develop an effective public participation process, agencies can be informed by contacting local community leaders in the potentially affected minority populations and low-income populations (as appropriate). This can help determine the number of public and individual meetings to be scheduled throughout the NEPA process.
- 4. When federally-recognized tribes are potentially affected by the proposed action, consider seeking government-to-government consultation (as appropriate) with tribal representatives, leaders, or officials, and offer appropriate opportunities for tribal participation (e.g., as a cooperating agency or consulting party).
- 5. Consider using media suitable to reach potentially affected minority populations and low-income populations (e.g., local newspapers and radio programs word of mouth, churches, civic centers, and other places where people gather in the community) to provide notification about an agency's proposed action and the scoping process (as appropriate).
- 6. Consider (as appropriate) specifically inviting potentially affected minority populations and low-income populations when conducting public scoping meetings.⁵ In some cases it may be useful for agencies to use a neutral third-party (e.g., convener, facilitator, and mediator) familiar with environmental justice issues and with the particular community that is potentially affected by the proposed action. It may also be appropriate to provide an interpreter for public meetings when LEP communities may be affected.
- Consider conferring with minority populations and low-income populations, and other interested individuals, communities, and organizations (as appropriate) to gather any relevant data on the current and past conditions (e.g., ecological,



⁸When convening groups, agencies should note the potential applicability of the Federal Advisory Committee Act (FACA) of 1972 (PL92-463).

- 7
- 8. Agencies may wish to consider ensuring that agency records clearly reflect the rationale for any scoping determinations made concerning minority populations and low-income populations (e.g., alternatives development, mitigation measures).
- 9. Consider circulating (as appropriate) a post-scoping summary report/document to potentially- affected minority populations and low-income populations, informing them of the input received and outcomes of the scoping process. Keeping the community informed may assist agencies in receiving meaningful engagement from the community during later stages of the NEPA process.
- 10. Regardless of the thoroughness of the scoping efforts, if new and significant information that potentially affect minority populations and low-income populations arise later in the NEPA process, in accordance with CEQ regulations (40 CFR 1501.7(c)), agencies should consider modifications to the proposed action, alternatives or potential mitigation measures. As appropriate, agencies may benefit by assessing consistency of the proposed modifications with the purpose and need.

III. DEFINING THE AFFECTED ENVIRONMENT

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- 1. Consistent with applicable requirements (e.g., 40 CFR §1502.15), as agencies describe the environment of the area(s) to be affected or created by the alternatives under consideration, they can benefit from an understanding of community and population characteristics, location, conditions and other relevant information. One of the important functions of defining the affected environment is to help agencies determine the outer boundaries (i.e., footprint) of each potentially impacted resource topic analyzed in the NEPA document. These boundaries help define the affected area within which potentially impacted minority populations and low-income populations will be considered during the NEPA review. The geographic extent of the affected environment may vary for each resource topic analyzed in the NEPA document.
- 2. Data (including input from minority populations, low-income populations, and other interested individuals, communities, and organizations) on ecological, aesthetic, historic, cultural, economic, social, or health conditions of minority populations and low-income populations within the affected environment can provide agencies with useful insight into how the community's conditions, characteristics, and/or location can influence the extent of the affected environment. (See also section 2.1, p.14)
- 3. After considering unique conditions (e.g., ecological, aesthetic, historic, cultural, economic, social, or health) of the potentially affected minority populations and low-income populations, Agencies may wish to consider that the extent of the affected environment maybe larger (or smaller) and differently shaped than the boundaries would have been drawn without the existence of those conditions. The affected environment may also not be contiguous. (See also section 5, p.23)
- 4. When determining whether a potentially affected minority population or low-income population influences the extent of the affected environment, agencies can be informed by considering the proposed action's: 1) exposure pathways (routes by which the minority or low-income population may come into contact with chemical, biological, physical, or radiological effects); 2) ecological, aesthetic, historic, cultural, economic, social, or health consequences to the community; and 3) distribution of adverse and_beneficial impacts from the proposed action. (See also section 5, p.23)

5. Agencies may wish to create a map to delineate the affected environment. A visual depiction of the affected environment may be beneficial to an agency's decision-making process, meaningful engagement efforts, and to the community's understanding of the proposed federal action. (See also section 2, p.14)

Specific Steps

As appropriate, agencies can consider the following actions:

- 1. In order to provide a useful comparative context for the consideration of impacts to minority populations and low-income populations, when developing the baseline characterization of the affected environment agencies can be informed by considering for each resource topic in the NEPA document: 1) exposure pathways; 2) direct, indirect and cumulative ecological, aesthetic, historic, cultural, economic, social, or health impacts; and 3) distribution of any potential beneficial or adverse impacts. Agencies may also be informed by consideration of multiple exposures. (See also section 7.1:11, p. 34)
- 2. Agencies may wish to consider collecting data and information relevant to the three community considerations in Step One (exposure pathways, related impacts, and beneficial impacts distribution) for minority populations and low-income populations within the boundaries of the baseline characterization. Include data related to reasonably foreseeable direct, indirect, and cumulative adverse and beneficial impacts from the proposed federal action on the community. Agencies may also be informed by consideration of multiple exposures. (See also section 8.1:11, p. 42)
- 3. Agencies may wish to consider data and information from a variety of sources, including, but not limited to: 1) community residents and other interested individuals and organizations; 2) data sets from federal, state, local and tribal governments; 3) peer-reviewed and other scientific literature; and 4) articles in industry and professional journals, popular press, websites, etc.
- 4. Agencies may wish to consider identifying and describing any unique conditions of the potentially affected minority populations and low-income populations that may be affected by the proposed action, based on data and information collected in Specific Step Two above. Unique conditions may include, but are not limited to:

 1) human health vulnerabilities (e.g., heightened disease susceptibility, health disparities); 2) socioeconomic vulnerabilities (e.g., reliance on a particular resource that may be affected by the proposed action, disruptions to community mobility and access as a result of infrastructure development); and 3) cultural vulnerabilities (e.g., traditional cultural properties and ceremonies, fish

consumption practices).

- 5. Agencies may wish to consider the need to revise the initial baseline characterization (see section 3.2:1) of the affected environment, including revisions to the outer boundaries and pockets of minority populations and low-income populations (as appropriate) using information obtained from specific steps Two through Four. Be mindful that data may suggest the outer boundaries of the affected environment and/or pockets of minority populations and low-income populations may require adjustment.
- 6. Consider documenting agencies' characterizations of the affected environment in plain language that is easily understood by the general public and the potentially affected minority populations and low-income populations.
- 7. Consider providing written explanation in the records for agencies' chosen methods and data used to characterize the affected environment (See, e.g., 40 CFR §1502.24)

IV. DEVELOPING AND SELECTING ALTERNATIVES

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- Providing minority populations and low-income populations with a purpose and need statement early in the NEPA process can help focus public input regarding appropriate reasonable alternatives. Reexamination of the potential alternatives in light of relevant public input will, in turn, assist agencies in identifying the range of reasonable alternatives, including a preferred alternative that meets the purpose and need, while addressing concerns of the community. (See also section 1.8, p. 11)
- 2. Agencies can be informed when reasonable alternatives reflect (as appropriate) a comparable level of detail concerning issues affecting minority populations and low-income populations. If reasonable alternatives have substantial differences in the level of detail of available information concerning impacts to minority populations and low-income populations, agencies may wish to consider generating comparable information about impacts or mitigation to make the comparisons relevant to one another.
- 3. As agencies explore the range of reasonable alternatives, agencies may consider (as appropriate) whether structuring alternatives to allow a decision to be based on an alternative developed from a combination of elements from multiple alternatives might be appropriate to address impacts to minority populations and low-income populations. Agencies may consider stating in the NEPA document that an alternative developed from the elements of the other alternatives may be considered. In this case, the alternatives may be structured to enable comparison of key elements across the alternatives (e.g., a modular analytic approach) (See, e.g., 40 CFR §1502.14(a)).
- 4. Providing a discussion of how and why the reasonable alternatives were developed and explaining why additional alternatives supported or proposed by the minority populations and low-income populations may have been eliminated from detailed study can assist agencies with managing potential public confusion or opposition (See, e.g., 40 CFR §1502.14).
- 5. Agencies can benefit by meaningfully engaging minority populations and low-income populations to provide input on the range and design of potential reasonable alternatives and the purpose and need statement while still under development, or as early as possible in the NEPA process, as well as

- encouraging communities to propose their own alternatives. Agencies can advance community engagement by means such as community advisory committees, public workshops, and individual and community-wide meetings.
- 6. The identification of a disproportionately high and adverse impact to a minority population or low-income population can heighten agencies' attention to identifying reasonable alternatives that could mitigate the adverse impact, and using community input into agencies' development of mitigation measures.

Specific Steps

As appropriate, agencies can consider the following actions:

- Consistent with applicable requirements provide minority populations and lowincome populations with an opportunity to provide input during agencies' development of the purpose and need statement and proposed alternatives, as well as reviewing and commenting on the draft purpose and need statement and the proposed alternatives during scoping.
- 2. Consistent with applicable requirements, agencies should consider any relevant public comments regarding the identification of reasonable alternatives.
- 3. Consistent with applicable requirements, agencies should consider whether the proposed alternatives avoid and/or mitigate impacts to minority populations and low-income populations. As appropriate, agencies may wish to consider distribution of benefits to minority populations and low-income populations.
- 4. Consider documenting the rationale used for selecting and eliminating alternatives from detailed study, including those additional alternatives supported or proposed by the minority populations and low-income populations.
- 5. When minority populations and low-income populations would be affected by the proposed action, agencies may wish to consider the following types of mitigation for selecting reasonable alternatives (as appropriate):
 - identify alternate locations or sites
 - alter the timing of activities to account for seasonal dependencies on natural and human resources
 - incorporate pollution prevention practices and policies to reduce the size or intensity of an action or its impacts
 - include additional benefits to the community

⁸ When convening groups, Agencies should consider the potential applicability of the Federal Advisory Committee Act (FACA) of 1972 (PL92-463).

- incorporate other measures proposed by the community, including changing specific aspects of the project
- do not implement the proposed action or action alternative.

Proper documentation for the chosen type of mitigation should be provided in the NEPA document.

- 6. Agencies may wish to consider identifying any alternatives that would result in a disproportionately high and adverse impact to minority populations and low-income populations.
- 7. Agencies may wish to consider which alternative(s) have the least adverse impact to minority populations and low-income populations and alternatives that would minimize or mitigate disproportionately high and adverse impacts as a factor when identifying reasonable alternatives and the preferred alternative.
- 8. Consider documenting any steps that may have been taken by agencies to receive community input during the development of: 1) the purpose and need statement; 2) reasonable alternatives; and 3) identification of a preferred alternative.

V. IDENTIFYING MINORITY POPULATIONS

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- In general, minority populations are identified based on the "affected environment." (See section 3) Minority populations may consist of groups of culturally different subpopulations with potentially different impacts and outreach needs. Minority populations may be dispersed throughout the study area, but have significant numbers.
- 2. Minority populations may reside in tightly clustered communities, or be evenly or unevenly distributed throughout the general population. Selecting a geographic unit of analysis (e.g., county, state, or region) without sufficient justification may portray minority population percentages inaccurately by artificially diluting their representation within the selected unit of analysis.
- 3. To sufficiently identify small concentrations (i.e., pockets) of minority populations, agencies may wish to supplement Census data⁷ with local demographic data. Local demographic data and information (including data provided by the community and Tribes) can improve an agency's decision-making process. Anecdotal data should be validated for accuracy whenever possible. Agencies should disclose, as appropriate, when anecdotal data has not been validated.
- 4. When conducting the *Meaningfully Greater* analysis⁸ (described below) agencies can benefit by being sensitive to situations where a large percentage of the residents is comprised of minority individuals. In selecting the appropriate reference community, it is important to capture relevant demographic information. A larger scale reference community (e.g., municipal, state, or regional) may be required under this circumstance to obtain results that accurately reflect the existence of a minority population in the geographic unit of analysis (e.g., census block) being analyzed.

² Some populations may not be fully accounted for in Census data. As appropriate, agencies can consider using local sources of data (including data provided by the community and Tribes) to conduct *the No Threshold* analysis.

⁸Meaningfully greater is a term used in "Appendix A, Text of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Annotated with Proposed Guidance on Terms" which is attached to CEQ's Guidance Confer the National Policy Act (1997).

- 5. The Fifty Percent analysis ⁹(described below) can be conducted to initially identify the extent to which minority populations reside within the affected environment. An aggregate of minority populations over 50% for the entire affected environment indicates increased scrutiny in the environmental justice analysis may be appropriate (e.g. to assess majority minority populations). Agencies may wish to conduct the Meaningfully Greater analysis, regardless of the results from the Fifty Percent analysis.
- 6. The use of thresholds to identify minority populations is an established method but may not always capture relevant demographic information. Regarding the identification of minority populations, population size is a factor considered in the Fifty Percent analysis and Meaningfully Greater analysis. The No-Threshold analysis (described below) attempts to identify all minority populations regardless of population size. Either the No-Threshold analysis alone, or conducting both the Fifty Percent and Meaningfully Greater analyses together can be used to identify minority populations prior to the determination of disproportionately high and adverse impacts.
- 7. The Fifty Percent analysis plays an important role in identifying minority populations when a large percentage of the population in the geographic unit of analysis or reference community is comprised of minority individuals. Under these circumstances, the Fifty Percent analysis can function as a direct measure, to ensure that when minority individuals comprise a majority of an appropriate geographic unit of analysis (e.g., block group 10) a minority population is identified, regardless of whether the Meaningfully Greater analysis has a similar outcome.
- 8. When either the No-Threshold analysis has been conducted, or when the Fifty Percent analysis and Meaningfully Greater analysis have been conducted, and the applicable analysis has documented a majority minority population (i.e., where a majority of the population in the affected environment is comprised of minorities) special emphasis should (as appropriate) be placed on identification of impacts. Due to the larger number of identified minority populations in these circumstances, agencies can benefit from focusing attention and available agency resources (e.g., outreach activities and impacts analyses) on minority populations

⁹50% is a term used in "Appendix A, Text of Executive Order 12898, Federal
Actions to Address Environmental Justice in Minority Populations and Low-Income
Populations, Annotated with Proposed Guidance on Terms" which is attached to CEQ's <u>Love or annotative</u>
Guidance Under the Sectional Environmental Policy (ct (1997)).

¹⁰ Census Block Groves are statistical divisions of census tracts, are generally defined to contain between 600 and 3,000 people, and are used to to present data and control block numbering. A block group consists of clusters of blocks within the same census tract that have the same first digit of their four-digit census block number.

that are potentially disproportionately impacted by the proposed action (i.e., see the factors listed in Disproportionately High and Adverse Impacts section).

9. Agencies can be informed by determining if any minority or low-income transient or geographically dispersed populations (e.g., Native Americans, migrant farm workers) reside seasonally within the affected area or may otherwise be affected (e.g. may reside elsewhere but come within the affected area for subsistence fishing or to collect traditional medicines) by consulting sources such as: 1) the US Department of Agriculture 2012 Census of Agriculture, Table 7: Hired Farm Labor Less than 150 Days and Migrant Farm Labor on Farms with Hired Labor; and 2) community members and other interested individuals or organizations, or other appropriate sources.

Specific Steps

As appropriate, agencies can consider the following actions:

The identification of minority populations can be accomplished in various ways. These ways, discussed in the following Specific Steps, include but are not limited to: A) the No Threshold analysis; or B) both the Fifty Percent analysis and the Meaningfully Greater analyses in concert.

A reference community is helpful for context and for future disproportionate effects analysis. A reference community's total number of minority individuals and percent minority can be compared to the population in the affected environment or geographic unit of analysis. Agencies may wish to clearly articulate the basis for the selection of a reference community.

A) To conduct the No-Threshold analysis:

- 1. Select an appropriate geographic unit of analysis (e.g., census block, block group).¹¹
- Determine the total number of minority individuals (all individuals other than non-Hispanic whites) and the percent minority for each geographic unit of analysis within the affected environment.

The constant of the smallest geographic areas that the Census Burcau uses to tabulate decennial data. Blocks are statistical areas bounded by visible features, such as streets, roads, streams, and railroad tracks, and by nonvisible boundaries, such as selected property lines and city, township, school district, and county limits. Block Characturare statistical divisions of census tracts, are generally defined to contain between 600 and 3,000 people, and are used to present data and control block numbering. A block group consists of clusters of blocks within the same census tract that have the same first digit of their four-digit census block number.

- 3. Identify the existence of a minority population for each geographic unit of analysis in which Step 2 (above) indicates a minority percentage.
- 4. Display the minority populations in map and table format by geographic unit of analysis, as appropriate.
- Provide a written rationale which explains the selection of the geographic unit of analysis, the reference community, and other methods used to identify minority populations.

- OR-

- B) To conduct both the <u>Fifty Percent</u> analysis and the <u>Meaningfully Greater</u> analyses in concert:
 - (i) Conducting the Fifty Percent analysis
 - 1. Determine the total number of individuals residing within the affected environment.
 - 2. Determine the total number of minority individuals (all individuals other than non-Hispanic whites) residing within the affected environment.
 - 3. Select the appropriate geographic unit of analysis within the affected environment (e.g., census block, block group).
 - 4. Determine the percentage of minority individuals (including Hispanics) residing within the geographic unit of analysis.
 - 5. If the percentage of minorities residing within the geographic unit of analysis meets or exceeds 50%, note the existence of a minority population.
 - 6. Next, compare the total number of minorities residing within the affected environment against the total number of individuals residing within the affected environment, in order to determine the percentage of minority individuals residing within the affected environment.
 - 7. If the percentage of minorities residing in the affected environment exceeds 50%, consider noting the need for a heightened focus throughout the entire environmental justice analysis.
 - 8. After completion of the Fifty Percent analysis, conduct the Meaningfully

Greater analysis.

(ii) Conducting the Meaningfully Greater analysis:

- 1. Select the appropriate geographic unit of analysis for the affected environment (e.g., census block, block group).
- 2. Select the appropriate reference community (e.g., county, state).
- 3. Select the appropriate meaningfully greater threshold for comparison. The Meaningfully Greater analysis requires use of a reasonable, subjective threshold¹² (e.g., ten or twenty percent greater than the reference community). What constitutes 'meaningfully greater' varies by agency, with some agencies considering any percentage in the selected geographic unit of analysis that is greater than the percentage in the appropriate reference community to qualify as being meaningfully greater.
- 4. Compare the percentage of minority individuals residing within the selected geographic units of analysis to the percentage of minority individuals residing within the reference community.
- 5. If the percentage of minorities residing within the geographic unit of analysis is meaningfully greater (based on application of the threshold) either individually or in the aggregate, than the percentage of minorities residing within the reference community, disclose the existence of a minority population.
- 6. Display identified minority populations in a map and table format, as appropriate. Care should be taken to present accurate and current data and information, and explain the limitations of the data and information.
- 7. Provide a written rationale which explains the selection of the geographic unit of analysis, the reference community, the meaningfully greater threshold, and other methods used to identify minority populations.

¹² To calculate benchmark values, some Agencies use a percent of the absolute number rather than adding a subjective threshold present. This is especially important when the percent of the minority population is small.

VI. <u>IDENTIFYING LOW-INCOME POPULATIONS</u>

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- When identifying low-income populations, it may be useful for agencies to consider the publication date for poverty data that is used in the Census Bureau's poverty thresholds and the U.S. Department of Health and Human Services' poverty guidelines or other agency-specific poverty guidelines. Using the most current poverty data is preferable but agencies should also consider whether there are differences in the dates for local, state and national data.
- Agencies may wish to refine low-income status determinations, whenever
 possible. Use of local data sources on poverty may be more current than the
 Census Bureau's American Community Survey or other periodically-collected
 data sources.
- 3. There are several ways to assess low-income thresholds, such as identifying the proportion of individuals below the poverty level, households below the poverty level, and families with children below the poverty level. It may be reasonable to assess low-income thresholds in more than one way to be more inclusive.
- 4. Low-income populations may reside in tightly clustered communities, rather than being evenly distributed throughout the general population. Selecting a geographic unit of analysis (e.g., county, state, or region) without sufficient justification may portray low income population percentages inaccurately by artificially diluting their representation within the selected unit of analysis.
- 5. Low-income status need not always be capped at the poverty level. In some instances, it may be appropriate for agencies to select a threshold for identifying low-income populations that exceeds the poverty level.

Specific Steps

As appropriate, agencies can consider the following actions:

The identification of low-income populations can be accomplished in various ways, including by conducting either: A) the *Alternative Criteria* analysis; or B) the Low-Income Threshold Criteria analysis.

While not required for the Alternative Criteria analysis, a reference community can be

helpful by providing context and for future disproportionate effects analysis. Agencies may wish to clearly articulate the basis for the selection of a reference community for either the Alternative Criteria analysis or the Low-Income Threshold Criteria analysis.

A. Conducting the Alternative Criteria analysis:

- Select and disclose the appropriate poverty thresholds as defined by the Census Bureau, the poverty guidelines as defined by the Department of Health and Human Services, or other appropriate source (e.g., federal program eligibility standards).
- 2. Select an appropriate geographic unit of analysis (e.g. block group, census tract) for identifying low-income populations in the affected environment.
- Select an appropriate threshold for determining whether a particular geographic unit of analysis is identified as a low-income population. (See section 6.1:5, p.28)
- Determine the total number of low-income individuals (or households) and the percent low-income for each geographic unit of analysis within the affected environment.
- 5. Identify the existence of a low-income population for each geographic unit of analysis in which Step 4 (above) indicates a low-income percentage at or above the selected Census Bureau poverty threshold or the Department of Health and Human Services poverty guidelines, or other appropriate alternate source.
- Display the low-income populations in map and table format by geographic unit of analysis, as appropriate.

B. Conducting the Low-Income Threshold Criteria analysis:

- Select and disclose the appropriate poverty thresholds as defined by the Census Bureau, the poverty guidelines as defined by the Department of Health and Human Services, or other appropriate source (e.g., federal program eligibility standards).
- Select an appropriate geographic unit of analysis (e.g., block group, census tract) for identifying low-income populations in the affected environment.

- 3. Select the appropriate reference community (e.g., county, state) to compare against the geographic units of analysis.
- 4. Select an appropriate measure(s) (such as individuals below the poverty level, median household income, or families below the poverty level) for comparing the poverty level in the geographic unit of analysis to the reference community.
- 5. Select an appropriate threshold for determining whether a particular geographic unit of analysis is identified as low-income. (See Guiding Principle 5).
- Determine the percentage of individuals (or households) at or below the selected low-income threshold for the reference community and in each geographic unit of analysis.
- 7. Compare the percentage (from Step 6 above) in each geographic unit of analysis to the percentage in the reference community.
- If the percentage in the geographic unit of analysis is equal to or greater than that of the reference community, disclose the existence of a low-income population.
- Display in the NEPA document low-income populations identified within the affected environment in a meaningful way, such as a map, table, pie-chart, etc. (as appropriate).
- 10. Provide a written rationale in the NEPA document which explains the selection of data sources and other methods that were used to identify low-income populations regardless of whether the Alternative Criteria analysis or Low-Income Threshold Criteria analysis was done. If some data sources were preferentially used over others, provide rationale supporting their selection.

VII. IMPACTS ANALYSIS

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- When analyzing the proposed action, it is important to recognize the relationship between potential impacts and potential exposures, as these terms are not synonymous. An impact is the adverse or beneficial result of exposure or other environmental consequences of the proposed action.
- 2. Impacts from the proposed action to minority populations and low-income populations in the affected environment may be either adverse or beneficial. The specific conditions and characteristics of the affected community including differences among minority subpopulations can inform whether the impact is beneficial or adverse. It is important to realize that what is considered a beneficial impact to some communities may be considered an adverse impact to others.
- 3. Potential direct, indirect, and cumulative impacts on minority populations and low-income populations in the affected environment include both human health and environmental impacts from an agency's programs, policies, or activities. Potential environmental impacts encompass both the natural and physical environment and can include ecological, aesthetic, historic, cultural, economic, social, or health¹³impacts to minority populations and low-income populations in the affected environment.
- 4. Background data on minority populations and low-income populations in the affected environment can enhance an agency's understanding of the nature and severity of potential impacts, which in turn informs an agency's decision-making process. Sources of data include, but are not limited to, national data sets (e.g., U.S. Census, National Vital Statistics System, National Birth Defect Registry, Area Health Resources Files, and National Registry for Historic Places) and state and local data sets (e.g., State Cancer Registries, State Register of Cultural Properties). In addition, empirical data, based on verifiable observations or experience, can also be used for the analysis.
- 5. In accordance with applicable regulations, federal agencies may wish to

¹³ Ecological, aesthetic, historic, cultural, economic, social or health impacts are delineated as effects in 40 CFR § 1508.8 and in Appendix A, "Text of Executive Order 12898, 'Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,' Annotated with Proposed Guidance on Terms" which is attached to CEQ's <u>Environmental Justice Environmental Justice</u> (Judicine Logical Logical Environmental Justice).

consider identifying the presence of transient and/or geographically dispersed populations and whether there is a potential for any unique or amplified impacts to these populations. Native Americans, farm workers, and other transient laborer and/or geographically dispersed populations are potentially more susceptible to environmental and health impacts. Reasons for this may include: 1) prolonged exposure to the natural environment with potential exposure to environmental hazards; 2) limited access to health care providers; 3) generally lower level of education; or 4) propensity for limited English proficiency.

- 6. As appropriate, Health Impact Assessments (HIAs), Social Impact Assessments (SIAs), and social determinants of health (consideration of economic and social conditions influencing human health) can provide agencies with important background data. Agencies may consider reaching out to entities both inside and outside the Federal government to seek their help in preparing HIAs, SIAs, and considering the social determinants of health, as either part of or an addendum to the NEPA document.
- 7. Minority populations and low-income populations in the affected environment may hold an opposing technical or scientific view (which can be based on several sources, including the community) from agencies regarding specific impacts and/or methods of analysis. Responsible opposing views from minority populations and low-income populations in the affected environment, including views regarding an impact's status as disproportionately high and adverse, may warrant discussion in a NEPA document. In instances of a Final Environmental Impact Statement, NEPA requires that agencies must discuss any responsible opposing view raised by the community which was not adequately discussed in the draft statement and indicate the agency's response to the issues raised (e.g., 40 CFR §1502.9(b)).
- 8. NEPA requires agencies to consider three types of effects or impacts: (1) direct effects, which are caused by the action and occur at the same time and place; (2) indirect effects, caused the action and are later in time or farther removed in distance, but are still reasonably foreseeable; and (3) cumulative impacts, the impacts on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. When assessing cumulative impacts, agencies may wish to (as appropriate):
 - be mindful that minority populations and low-income populations in the affected environment may be differently affected by past, present, or reasonably foreseeable future impacts than the general population; and

- in some circumstances, consider (among other existing conditions) chemical
 and non-chemical stressors that could potentially amplify impacts from the
 proposed action to the health of minority populations and low-income
 populations in the affected environment. Non-chemical stressors can include
 current health status (e.g. pre-existing health conditions) and past exposure
 histories, and social factors such as community property values, sources of
 income, level of income, and standard of living.
- 9. Consistent with applicable requirements, agencies should consider, when a proposed action that may fall within a categorical exclusion (CE) involves impacts to minority populations and low-income populations in the affected environment, whether any extraordinary circumstances are applicable. Extraordinary circumstances are unique situations that may result in potential impacts beyond those generally arising from actions subject to the CE. Agencies have developed their own definitions of the type of circumstances that may constitute extraordinary circumstances, and those regulations should be consulted. Before determining that a proposed action can be categorically excluded, it must be determined whether extraordinary circumstances may exist (e.g., 40 CFR §1508.4) If a proposed action that otherwise would be categorically excluded could potentially have a disproportionately high and adverse impact on minority populations and low-income populations in the affected environment, this could contribute to finding an extraordinary circumstance requiring the project undergo further analysis in an Environmental Assessment or EIS, as appropriate.
- 10. According to the Intergovernmental Panel on Climate Change (IPCC) "[c]limate-related hazards exacerbate other stressors, often with negative outcomes for livelihoods, especially for people living in poverty... Climate-related hazards affect poor people's lives directly through impacts on livelihoods, reductions in crop yields, or destruction of homes and indirectly through, for example, increased food prices and food insecurity" (IPCC, Climate Change 2014). Agencies may wish to consider how impacts from the proposed action could potentially amplify climate change-related hazards (e.g., storm surge, heat waves, drought, flooding, and sea level change) in minority populations and low-income populations in the affected environment, and vice versa. Agencies may benefit by considering climate resilience in the proposal's design and alternatives.

- 11. In some circumstances, agencies may consider cumulative impacts that may result from chemical and non-chemical stressors, exposures from multiple routes or sources, and factors that differentially affect exposure or toxicity to communities.
 - The cumulative ecological, aesthetic, historic, cultural, economic, social, or health effects of the proposed action can arise from and also include nonchemical stressors.
 - Communities can experience cumulative impacts to one or more chemical, biological, physical, or radiological contaminants across environmental media (e.g., air, water, soil, land use) from single or multiple sources, over time in one or more locations.
 - Communities can experience multiple exposures from any combination of direct, indirect, or cumulative impacts to two or more chemical, biological, physical, or radiological contaminants from single or multiple sources.
- 12. As with any resource area, whether environmental justice is being addressed within each individual resource section of the NEPA document or it is addressed in a single section of the NEPA document, agencies can benefit from a transparent presentation of environmental justice issues. Agencies may wish to consider including in the Introduction, Overview, and/or Executive Summary section of the NEPA document a brief discussion and/or table presenting a summary of the environmental justice impacts discussed in greater detail within the document. This discussion may consider providing environmental justice information, such as general findings and conclusions to make the information readily accessible for agency decision-making and to facilitate public use. Agencies may note in the table of contents all areas where environmental justice is discussed.

Significance

- Pursuant to NEPA, the human environment includes both the natural and physical (e.g., built) environment and the relationship of people with that environment. Significant impacts to the human environment (including minority populations and low-income populations) can result from ecological, aesthetic, historic, cultural, economic, social, or health impacts. However, economic or social impacts are not considered significant unless they are interrelated with natural or physical environmental impacts.
- 2. Executive Order 12898 does not change the legal thresholds for NEPA, including whether a Categorical Exclusion, Environmental Assessment, or an

Environmental Impact Statement should be prepared.

- 3. A disproportionately high and adverse impact to minority populations and low-income populations can occur at any level of NEPA review. In some circumstances, an agency may determine that impacts are disproportionately high and adverse, but not significant within the meaning of NEPA. In other circumstances, an agency may determine that an impact is both disproportionately high and adverse and significant within the meaning of NEPA.
- 4. In general, pursuant to NEPA, determining whether an impact is significant requires consideration of both context (i.e., society as a whole, the affected region, the affected interests, and the locality) and intensity (i.e., the severity of the impact) (see 40 CFR §1508.27(a)-(b)). The impacts of a proposed action on minority populations and low-income populations should inform the determination of whether impacts are significant.
- 5. An assessment of an impact's significance to the general population without consideration of the impact to minority populations and low-income populations in the affected environment may not be adequate. An agency's consideration of impacts to minority populations and low-income populations helps ensure that significant impacts are identified.
- 6. Executive Order 12898 instructs agencies to determine whether impacts are disproportionately high and adverse to minority populations and low-income populations but EO 12898 does not address significance. Agencies may choose to consider determining whether an impact is significant prior to analyzing whether the impact is disproportionately high and adverse, since significance may be a factor for consideration in an agency's disproportionately high and adverse determination.¹⁴ To the extent agencies seek additional guidance on how to analyze significance. Refer to CEQ NEPA regulation on significance at 40 CFR §1508.27. (See also section 7.1-2)
- 7. Determining whether an impact is significant to minority populations and low-income populations in the affected environment involves focusing the analysis on aspects of context and intensity most relevant to the impacted community. In general, this entails focusing on various factors related to an impact's severity

¹⁴ See Appendix A, "Text of Executive Order 12898, 'Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,' Annotated with Proposed Guidance on Terms in the Executive Order," which is attached to CEQ's Appendix and Income Indiana English (1991).

- 8. The degree to which an impact involves unique or unknown risks (see 40 CFR §1508.27(b)(5)) to minority populations and low-income populations in the affected environment can inform how agencies assesses the significance of the impact. Minority populations and low-income populations could be uniquely susceptible to impacts from a proposed action due to: 1) special vulnerabilities, e.g. pre-existing health conditions that exceed norms among the general population; 2) unique routes of exposure, e.g. use of surface or well water in rural communities; or 3) cultural practices, e.g. subsistence fishing, hunting or gathering, access to sacred sites.
- 9. When both positive and adverse impacts have been identified, a significant impact may exist even if an agency believes that on balance the effect will be beneficial (see 40 CFR§1508.27(b)(1)). While an action may result in an overall potentially beneficial impact to the general population, the impact may still present an adverse impact to minority populations and low-income populations in the affected environment.
- 10. Additional factors related to an impact's intensity (discussed in 40 CFR §1508.27(b)) that could lead to a finding of significance to minority populations and low-income populations in the affected environment, despite having no significant impact to the general population include: 1) the health and safety of the community; 2) the community's unique geographic characteristics, including proximity to cultural resources; 3) the degree to which the action may establish a precedent for future actions with significant effects; 4) loss of significant cultural or historical resources; and 5) the impact's relation to other cumulatively significant impacts.
- 11. The various factors related to an impact's intensity (discussed in 40 CFR §1508.27(b)) can also help inform an agency's consideration of potential mitigation measures and identification of potential disproportionately high and adverse impacts.
- 12. When assessing the availability of information regarding minority populations and low-income populations in the affected environment, information may be less available than for the general population. When an agency is evaluating reasonably foreseeable significant impacts in an environmental impact statement, it may wish to consider the availability of information regarding minority populations and low-income populations. If relevant information on

minority populations and low-income populations is not currently in the possession of an agency, this should be clearly stated. If the unavailable information is essential to making a reasoned choice among alternatives, NEPA provides that an agency must make reasonable efforts to collect the information. so long as the means for obtaining it are known and the cost is not exorbitant (see 40 CFR §1502.22(a)-(b)). If the overall costs of obtaining the unavailable information needed to conduct the analysis is exorbitant or the means to obtain it are not known, NEPA provides that an agency should (as appropriate): 1) state the information is incomplete or unavailable; 2) state the relevance of the incomplete or unavailable information; 3) summarize existing credible scientific evidence relevant to evaluating the impact; and 4) include an evaluation of such impacts based on theoretical approaches or research methods generally accepted in the scientific community. Agencies may consider addressing unavailable information in other NEPA documents in a similar manner. Agencies may choose to proceed in the same way if subpopulation information not currently in possession of an agency is not essential, but could aid in assessing impacts rather than determining significance regardless of whether the proposed action is significant (e.g., during Environmental Assessments).

- 13. Considering whether a proposed action may result in an impact with a low probability of occurrence, but with catastrophic consequences (i.e., lowprobability, high impact event) can inform an agency's assessment of the significance of the impact. When analyzing a proposed action's impacts and risks in an EIS from reasonably foreseeable low-probability, high-impact events (including, but not limited to, accidental releases of contaminants and natural disasters) agencies may wish to consider the availability of information concerning the potential unique vulnerabilities of minority populations and lowincome populations in the affected environment (see 40 CFR §1502.22(b)). Potential vulnerabilities of minority populations and low-income populations to low-probability, high-impact events may include, but are not limited to, a lack of infrastructure and resources to address these unanticipated impacts; inability to evacuate or relocate; lack of access to health care; and reliance on affected natural and cultural resources. Agencies may consider addressing unavailable information in other NEPA documents (e.g. during Environmental Assessments) in a similar manner.
- 14. The degree to which an impact to minority populations and low-income populations in the affected environment is highly controversial (see 40 CFR §1508.27(b)(4)) (e.g., a substantive dispute as to the size, nature, or effect of the

action) can inform whether there is a significant impact. If an agency identifies a highly controversial impact to minority populations and low-income populations it may wish to consider seeking additional information and coordination in order to evaluate the controversy.

Specific Steps

As appropriate, agencies can consider the following actions:

- Agencies may wish to recognize that there may be cultural differences among various individuals, communities, and organizations regarding what constitutes an impact or the severity of an impact.
- 2. Evaluation of impacts to minority populations and low income populations may inform other sections, including an agency's consideration of the affected environment, alternatives and meaningful engagement.
- 3. Agencies may wish to begin analyzing potential adverse and beneficial impacts to minority populations and low-income populations after the exposure pathways and environmental consequences of the proposed action (e.g., ecological, aesthetic, historic, cultural, economic, social, or health impacts) are identified and the affected environment is established. However, economic or social impacts, alone, are not considered significant unless they are interrelated with natural or physical environmental impacts.
- 4. Agencies may wish to make diligent efforts to meaningfully engage minority populations and low-income populations in the affected environment regarding possible impacts from the proposed action and document findings throughout the NEPA process. Engaging the community about possible impacts is most effective when initiated as early as possible in the NEPA process (see Section I).
- 5. Agencies may consider analyzing potential impacts in light of: 1) public input documented in Step Two above; and 2) previously collected data on minority populations and low-income populations in the affected environment, particularly with regard to unique conditions. Unique conditions include, but are not limited to ecological, aesthetic, historic, cultural, economic, social, or health vulnerabilities.
- 6. Agencies may consider describing all reasonably foreseeable direct, indirect and cumulative adverse impacts to minority populations and low-income populations in the affected environment that may result from a change to the

environment or exposure to environmental contaminants (e.g., chemical, biological, physical, or radiological) or arising from related ecological, aesthetic, historic, cultural, economic, social, or health consequences of the proposed action to the community.

- 7. Agencies may consider describing all reasonably foreseeable direct, indirect and cumulative beneficial impacts to minority populations and low-income populations in the affected environment that may result from a change to the environment or exposure to environmental contaminants (e.g., chemical, biological, physical, or radiological) or arising from related ecological, aesthetic, historic, cultural, economic, social, or health consequences of the proposed action to the community.
- 8. Agencies may consider identifying and documenting sources of uncertainty in the impact analyses, particularly with regard to data supporting the characterization of subpopulations (See section 5, p.23 and section 6, p.28)
- 9. Agencies may wish to provide the records that reflect an agency's rationale for any decisions made as part of the analyses, as well as an agency's chosen methods and data used to conduct the impact analyses.

VIII. <u>DISPROPORTIONATELY HIGH AND ADVERSE</u> <u>IMPACTS</u>

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- 1. As informed by CEQ's <u>Environmental Justice Guidance Under the National Environmental Policy Act (1997)</u>, the identification of a disproportionately high and adverse impact on minority and low income populations does not preclude a proposed agency action from going forward, nor does it necessarily compel a conclusion that a proposed action is environmentally unsatisfactory. If an agency determines there is a disproportionately high and adverse impact to minority populations and low-income populations, an agency may wish to consider heightening its focus on meaningful public engagement regarding community preferences, considering an appropriate range of alternatives (including alternative sites), and mitigation and monitoring measures.
- 'Context' and 'intensity', evaluated during the consideration of an impact's significance (See 40 CFR §1508.27) may be factors that can (as appropriate) inform an agency's determination whether an impact is disproportionately high and adverse (See Executive Order 12898).
- 3. 'Significance' may, as appropriate, be a factor in determining if an impact is disproportionately high and adverse. (See Appendix A, Text of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Annotated with Proposed Guidance on Terms' which is attached to CEQ's Environmental Justice Guidance Under the National Environmental Policy Act (1997). In some circumstances, an agency may determine that impacts are disproportionately high and adverse, but not significant within the meaning of NEPA. In other circumstances, an agency may determine that an impact is both disproportionately high and adverse and significant within the meaning of NEPA. A finding of no significant impacts to the general population is insufficient (on its own) to base a determination that there are no disproportionately high and adverse impacts to minority populations and low-income populations.
- 4. Disproportionately high and adverse impacts are typically determined based on the impacts in one or more resource topics analyzed in NEPA documents. Any identified impact to human health or the environment (e.g., impacts on noise, biota, air quality, traffic/congestion, land use) that potentially affects

- minority populations and low-income populations in the affected environment might result in disproportionately high and adverse impacts.
- 5. Agencies may wish to integrate the analysis of the potential for disproportionately high and adverse impacts to minority populations and low-income populations into the NEPA process. The basic principles and practices of analysis applicable to all resource topics analyzed in the NEPA document (air emissions, water, biota, human health, noise, etc.) apply to the analysis of disproportionately high and adverse impacts as well.
- 6. Agencies may wish to consider factors that can amplify identified impacts (e.g., the unique exposure pathways, prior exposures, social determinants of health) to ensure a comprehensive review of potential disproportionately high and adverse impacts to minority populations and low-income populations.
- 7. Agencies may wish to recognize that in instances where an impact from the proposed action initially appears to be identical to both the affected general population and the affected minority populations and low-income populations, there may be inter-related ecological, aesthetic, historic, cultural, economic, social, or health factors that amplify the impact (e.g., unique exposure pathways, social determinants of health, community cohesion). After consideration of factors that can amplify an impact to minority populations and low-income populations in the affected environment, an agency may determine the impact to be disproportionately high and adverse.
- 8. Agencies' approaches should not determine that a proposed action or alternative would not have a disproportionately high and adverse impact on minority populations and low-income populations solely because the potential impacts of the proposed action or alternative on the general population would be less than significant (as defined by NEPA). Agencies may wish to consider unique vulnerabilities, special exposure pathways, and cultural practices associated with minority populations and low-income populations in the affected environment.
- 9. The disproportionately high and adverse impacts determination can help inform how an agency develops and/or selects alternative(s) and mitigation measures to avoid, minimize, rectify, reduce, or compensate for adverse impacts.
- 10. Agencies may wish to consider the distribution of beneficial and adverse impacts between minority populations and low-income populations in the

affected environment and the general population as a factor in the disproportionately high and adverse impacts determination. Scenarios in which minority populations and low-income populations receive an uneven distribution of benefits in the presence of adverse impacts, (e.g. a smaller proportion of beneficial impacts accrue to minority populations and low income populations than the general population) could indicate a potential disproportionately high and adverse impact.

- 11. Beneficial impacts from, and mitigation measures to, reduce the impacts associated with federal actions are distinct concepts.
- 12. Agencies' approaches to making a disproportionately high and adverse impact determination can be informed by the equitable distribution of beneficial impacts and how adverse impacts are mitigated. The end result is the same, as agencies consider mitigation for identified adverse impacts and address identified potentially disproportionately high and adverse impacts with additional mitigation measures informed by community involvement. Regardless of the approach that is selected, an agency may wish to explain its analysis and rationale.
- 13. While all approaches for identifying and addressing disproportionately high and adverse impacts consider the distribution of adverse and beneficial impacts to minority populations and low-income populations in the affected environment, the timing for considering mitigation varies for some approaches. Some agencies identify potentially disproportionately high and adverse impacts prior to developing mitigation measures for addressing the impact. Other agencies wait until all possible mitigation measures to address the impact have been developed before making the disproportionately high and adverse impact determination.
- 14. Agencies may wish to identify a relevant and appropriate comparison group when evaluating the impact of the proposed federal action on minority populations and low-income populations. The comparison group provides context (as appropriate) for the analysis of human health effects, environmental effects and the risk or rate of hazard exposure to minority populations and low-income populations in the affected environment. Comparison group is distinct from a reference community (See section 5, p.23 and section 6, p.28) which are used to identify the existence of minority populations and low-income populations.
- 15. In the disproportionately high and adverse impact analysis, agencies may wish

to compare (as appropriate) impacts to minority populations and low-income populations in the affected environment with an appropriate comparison group within the affected environment. Relevant and appropriate comparison groups are selected based on the nature and scope of the proposed project. The types of calculations used for the comparison can include, but are not limited to, rates and risks. In addition, agencies may wish to (as appropriate) reference relevant national, state, and/or local data sets to inform the determination of a disproportionately high and adverse impact.

- 16. Agencies may wish to consider delineating parameters for selecting relevant comparison groups that can be applied on a case-by-case basis. Parameters may be different for a programmatic document versus a document that is either tiered to the initial programmatic document or is a stand-alone site-specific NEPA review. More than one comparison group may be appropriate in some instances. When selecting relevant comparison groups, it is important to capture, as appropriate, relevant demographic, ecological, aesthetic, historic, cultural, economic, social, and health information. Considerations include, but are not limited to the following parameters:
 - a. Relevant jurisdictional boundaries based on the affected environment attributed to the specific impact being analyzed (county, state, or national level);
 - b. Environmental stressor sources that may cause adverse health effects, such as the number of environmentally-regulated facilities within a community, proximity of regulated facilities, and quality of the air, water, and other environmental media:
 - c. Existing health conditions such as percent of infant mortality, average birth weight, adult mortality, life expectancy at birth, and life span (e.g., age groups, healthy versus vulnerable populations);
 - d. General demographics, e.g., percent of racial/ethnic population, population density, percent of the Native American population, distribution of languages spoken in population, and percent of the population that is literate in English or other languages; and
 - e. Economic information, e.g., unemployment rate, income level and distribution, percent of homeowners and renters in a community, percent of residents relying on agriculture in the area, and percent relying on government resources.
- 16. Agencies may wish to document the selection process used to identify relevant



comparison groups in the NEPA review document.

17. Potential disproportionately high and adverse impacts should be described quantitatively whenever possible. At minimum, agencies may wish to provide a qualitative description. Agencies may want to pay particular attention to the description of human health impacts, which may be described in terms of risks or rates of exposure, if appropriate data are available.

Specific Steps

As appropriate, agencies can consider the following actions:

Specific Steps from Previous Sections to be Completed Prior to Disproportionately High and Adverse Impact Analysis:

- Consider determining the affected environment for the proposed federal action. The geographic scope of the affected environment may be different for each resource topic analyzed in the NEPA document (e.g., human health, air, water, socio-economics, wildlife, etc.) and analyzed alternative. The NEPA documents should contain a description of the environment of the areas to be affected by the alternatives under consideration. (See section 3, p.17)
- 2. Consider referencing available information on environmental, and related ecological, aesthetic, historic, cultural, economic, social, or health impacts from the proposed action within the affected environment. (See section 3, p.17)
- 3. Consider determining whether any minority populations and low-income populations are present within the affected environment for each of the alternatives carried forward for detailed analysis in the NEPA document (See section 5, p.23 and section 6 p.28). Generally, if minority populations and low-income populations are not identified, then the environmental justice analysis is complete.
- 4. Consider analyzing direct, indirect, and cumulative impacts to minority populations and low-income populations in the affected environment from resource topics analyzed in the NEPA document for each alternative carried forward for detailed analysis in the NEPA document. Look at impacts to: 1) human health; and 2) other environmental effects (See section 7, p. 31).
- 5. Consider determining whether any direct, indirect, or cumulative impacts to minority populations and low-income populations in the affected environment, for each alternative carried forward for detailed analysis in the NEPA document, are 'significant' (as employed by NEPA). (See section 7, p.31).

Specific Steps to Conduct the Disproportionately High and Adverse Impacts Analysis:

- When appropriate and as decided on a case-by-case basis, agencies may wish
 to select and explain the parameters used for identifying a relevant and
 appropriate comparison group within the affected environment.
- 2. Consider identifying the relevant and appropriate comparison group within the affected environment using the parameters selected in Step One, above.
- 3. Agencies may wish to consider the degree to which any of the following seven factors ¹⁸ could amplify identified impacts. Factors that can potentially amplify an impact to minority populations and low-income populations in the affected environment include, but are not limited to, the following:
 - a. Proximity and exposure to chemical and other adverse stressors, e.g., impacts commonly experienced by fence-line communities;
 - b. Vulnerable populations, e.g., minority and low-income children, pregnant women, elderly, or groups with high asthma rates;
 - c. Unique exposure pathways, e.g., subsistence fishing, hunting, or gathering in minority and low-income populations;
 - d. Multiple or cumulative impacts, e.g., exposure to several sources of pollutions or pollutants from single or multiple sources;
 - e. Ability to participate in the decision-making process, e.g., lack of education or language barriers in minority and low-income populations;
 - f. Physical infrastructure, e.g., inadequate housing, roads, or water supplies in communities;
 - g. Non-chemical stressors, e.g., chronic stress related to environmental or socio-economic impacts.

Agencies can be informed by considering additional factors that could amplify an impact to minority populations and low-income populations in the affected environment (as appropriate). Any identified factors that amplify the impacts to minority populations and low-income populations may (as appropriate) inform all subsequent analyses.

4. Consider summarizing adverse and beneficial impacts to both minority

¹⁸ See US EPA, Factors for Identifying and Addressing Disproportionate Environmental Health Impacts (2007); Supplement to American Journal of Public Health, Vol. 101, No. S1 (Dec 2011).

populations and low-income populations in the affected environment and, if applicable, appropriate comparison groups. Also, consider summarizing any mitigation measures that may have been developed prior to the commencement of the disproportionately high and adverse impact assessment that reduce adverse impacts to minority populations and low-income populations and, if applicable, comparison groups (see 40 CFR §1508.20). These summaries can (as appropriate) apply to the analysis of determining whether there is a disproportionately high and adverse impact from the proposed action for each alternative carried forward in the NEPA document.

- 5. Consider analyzing the distribution of adverse and beneficial impacts between the general population and minority populations and low-income populations in the affected environment as a factor when determining whether there is a disproportionately high and adverse impact. The distribution of adverse and beneficial impacts between the general population and minority populations and low-income populations is a factor that can be considered in the disproportionately high and adverse impacts determination.
- 6. There are various approaches to determine whether a proposed agency action will cause disproportionately high and adverse impacts to minority populations and low-income populations in the affected environment. For example:

a) Impact Focus Approach:

- Beneficial impacts are considered in the analysis of the distribution of adverse and beneficial impacts between the general population and minority populations and low-income populations in the affected environment (see Step 5 above).
- ii. Consider (as appropriate) relevant mitigation measures (including avoidance and minimization) developed prior to the commencement of the disproportionately high and adverse impact assessment that reduce adverse impacts to minority populations and low-income populations.
- iii. If an adverse impact to minority populations and low-income populations remains after accounting for the mitigation measures developed prior to the commencement of the disproportionately high and adverse impact assessment, an agency should continue to consider whether the remaining adverse impact(s) is/are disproportionately high and adverse.

b) Balancing Approach:

 Consider both mitigation measures developed prior to the commencement of the disproportionately high and adverse impact assessment that reduce adverse impacts to minority populations and lowincome populations and any additional mitigation developed during the disproportionately high and adverse impacts assessment (see also Step iv. below).

- ii. After considering all appropriate mitigation measures, balance any remaining adverse impacts with beneficial impacts of the project to the community, as appropriate (see also Steps iv. and v. below).
- iii. If an adverse impact to minority populations and low-income populations remain after accounting for all appropriate mitigation measures and related project benefits, continue to consider whether the remaining adverse impact(s) is/are disproportionately high and adverse.
- iv. In determining the balance of beneficial and adverse impacts, the beneficial impacts and mitigation should be related to the type and location of the adverse impact.
- v. Agencies should not balance adverse impacts that directly affect human health at levels of concern, especially those that exceed health criteria, with project benefits.
- 7. When appropriate, as decided on a case-by-case basis, after full consideration of Specific Steps to Conduct the Disproportionately High and Adverse Impacts Analysis (see Steps 1-6 above) consider comparing direct, indirect and cumulative adverse impacts to minority populations and low-income populations in the affected environment within the geographic unit of analysis to an appropriate comparison group. Measurable standards and evidence-based approaches can be used, if available and appropriate. This comparison may be considered for each alternative carried forward for detailed analysis in the NEPA document.
- 8. Consider whether any of the following conditions are met, which may (as appropriate) be measured in risks and rates:

Exposure:

 exposure by minority populations and low-income populations to an environmental hazard that appreciably exceeds or is likely to appreciably exceed the risk or rate to the appropriate comparison group

• Human health or environmental impact:

o to minority populations and low-income populations is above generally

accepted norms16

- to minority populations and low-income populations exceeds or is likely to appreciably exceed the impact to an appropriate comparison group
- o predominantly borne by minority populations or low-income populations
- occurs in minority populations and low-income populations affected by cumulative or multiple adverse exposures from environmental hazards
- to minority populations and low-income populations is significant and adverse.
- Consider determining and stating in the NEPA document whether disproportionately high and adverse impacts exist for the proposed action and alternatives carried forward for detailed analysis in the NEPA document.
- 10. As appropriate, at this stage in the analysis, agencies may wish to reassess whether any disproportionately high and adverse impact is significant under NEPA through a review of context and intensity.
- 11. Consider communicating identified disproportionately high and adverse impacts to the affected minority populations and low-income populations and the public as early as appropriate to help identify potential mitigation measures.
- 12. As practicable, consider coordinating with minority populations and low-income populations in the affected environment as an agency develops and explores potential mitigation measures to address identified impacts to minority populations and low-income populations, including but not limited to those determined by an agency to be disproportionately high and adverse (See section 9, p.50).



¹⁶Generally accepted norms is a term used in "Appendix A, Text of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Annotated with Proposed Guidance on Terms" which is attached to CEQ's <u>Environmental Justice Cathlance Under the National Landrophy (2015)</u>.

IX. MITIGATION AND MONITORING

Guiding Principles

Agencies can be informed by consideration of the following guiding principles:

- 1. Identifying mitigation is an important component of NEPA and Executive Order 12898. Generally, in NEPA documents, when an agency identifies potential adverse impacts it may wish to evaluate practicable mitigating measures, even if an agency determines the adverse impacts are not significant. The unique characteristics and conditions of minority populations and low-income populations in the affected environment may require adaptive and innovative mitigation measures to sufficiently address the specific circumstances and impacts presented by the proposed action. This includes mitigation of identified disproportionately high and adverse impacts, whenever feasible. Agencies may wish to evaluate mitigation measures even if the project will have some benefits to minority populations and low-income populations.
- 2. Throughout the NEPA process, agencies may wish to (as appropriate) involve potentially affected minority populations and low-income populations as agencies develop and implement mitigation measures and monitoring. Establishing groups made up of community members can be an effective method of engaging minority and low-income populations as an agency develops mitigation measures.
- Agencies may wish to consider whether mitigation or monitoring measures can be included as conditions in its associated permits and licenses or in federal assistance grants and agreements, as appropriate.
- 4. Including monitoring requirements and sharing monitoring results with the public can often help to alleviate issues raised by minority populations and low-income populations. Discussions with minority populations and low-income populations regarding the types of monitoring information that are of interest and how to best share monitoring results may improve the effectiveness of monitoring efforts. Feedback from minority populations and low-income populations can also be considered when developing monitoring measures.
- 5. Agencies may wish to consider, when preparing an Environmental Assessment¹⁷, developing mitigation measures to avoid, minimize, rectify, reduce, or compensate for potentially significant adverse environmental

¹⁷CEQ, <u>Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated</u> Findings of No Significant Impact (Jan. 2011)





- impacts that would otherwise require full review in an environmental impact statement.
- 6. When there are unavoidable adverse impacts to minority populations and low-income populations in the affected environment, agencies may wish to consider appropriate compensating mitigation and/or additional project benefits and provide express details in the NEPA document (see 40 CFR §1508.20(e)). These unavoidable adverse impacts can also be addressed separately in an environmental justice technical report.
- Agencies may wish to make their mitigation and monitoring commitments clear and accessible in a format easily understandable by the public, including minority populations and low-income populations.
- 8. Agencies may wish to identify mitigation and monitoring measures designed specifically to address impacts to minority populations and low-income populations in the affected environment separately in the NEPA decision document and also separately in an environmental justice technical report.
- 9. If mitigation measures for impacts to minority populations and low-income populations in the affected environment have been identified in the NEPA document, agencies may wish to develop an adaptive management plan and conduct implementation and effectiveness monitoring. Monitoring implementation of mitigation measures can inform an agency and community whether the measures are on schedule and when they have been completed. Through the use of effectiveness monitoring, an agency and community can learn if the mitigation measures are providing the predicted outcomes. An adaptive management plan can provide agencies with a means for taking corrective action if mitigation implementation or effectiveness monitoring indicates the measures are not achieving the intended outcomes.

Specific Steps

As appropriate, agencies can consider the following actions:

- Agencies can be informed by data and information on the affected environment, adverse and beneficial impacts, (direct, indirect and cumulative effects) and public outreach and participation when developing potential mitigation measures.
- 2. When agencies are developing mitigation measures they should consider engaging minority populations and low-income populations early and throughout

the process, as appropriate.

- 3. Consistent with applicable requirements, agencies should identify and analyze mitigation measures for impacts to minority populations and low-income populations in the affected environment (See 40 CFR §1502.14 and 1502.16). This includes appropriate mitigation measures not already included in the proposed action or alternatives (See 40 CFR §1502.14(f)) and any additional means to mitigate (if not fully covered under 40 CFR §1502.14(f)) for each identified disproportionately high and adverse impact to minority populations and low-income populations (See 40 CFR §1502.16(h).
- 4. If an agency determines there are disproportionately high and adverse impacts to minority populations and low income populations from its proposed project, the agency should consider and take action, as appropriate, to mitigate and monitor the impacts. When developing mitigation measures for adverse impacts, including for disproportionately high and adverse effects 18 to minority populations and low-income populations in the affected environment, consider the following five mitigation methods for each potential impact identified:
 - a. Avoiding an impact by not taking a certain action or parts of an action.
 - b. Minimizing an impact by limiting the degree or magnitude of the action and its implementation.
 - c. Rectifying an impact by repairing, rehabilitating, or restoring the affected environment.
 - d. Reducing or eliminating an impact's frequency over time, such as through preservation and maintenance operations during the life of the action.
 - e. Compensating for an impact by replacing or providing substitute resources or environments.
- 5. Consistent with applicable requirements, agencies should state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted. (See 40 CFR §1502.2(c)). If disproportionately high and adverse impacts are unlikely to be fully mitigated, agencies may wish to explain in the analysis which measures to avoid or minimize environmental harm to minority populations and low-income populations from the selected alternative would be adopted, and describe any measures that were not adopted, and why they were not. An agency's analysis can disclose remaining disproportionately high and adverse impacts on



¹⁸ See e.g. 17 /despt. 10. Technolog fariros new That he Total was A 1774 What Congresses. (April 1998)

- minority populations and low-income populations in the affected environment, if any, and explain why further mitigation is not proposed.
- 6. Consider specifying mitigation or monitoring commitments in terms of timeframe, measurable performance standards or expected results (as appropriate) so as to establish clear performance expectations, and include appropriate language in the NEPA documents. The description of the mitigation measures should include (as appropriate) accountability measures (e.g., identify clear consequences) for failure to implement selected mitigation or monitoring measures. Agencies can be informed regarding feasibility of implementation by an explanation of how the mitigation and monitoring measures will be funded and who will implement the measures.
- 7. Consider developing an implementation and effectiveness monitoring plan to track performance and outcomes and reference the plan within the decision document (as appropriate).
- 8. Consider including an adaptive management process to adjust mitigation measures based on monitoring results.
- 9. Consider providing mitigation commitments and monitoring reports to the public including minority populations and low-income populations in appropriate formats (e.g., online, in print) whenever possible.
- 10. When conducting an Environmental Assessment, agencies may evaluate direct, indirect, and cumulative impacts to potentially affected minority populations and low-income populations for all of the relevant resource areas/impact topics. Regardless of whether an agency determines that a 'finding of no significant impact' (FONSI) or mitigated FONSI is appropriate for a proposed action analyzed in an environmental assessment, agencies may wish to explore in the environmental assessment mitigation measures for all potential adverse impacts. If issuing a FONSI, agencies may wish to clearly describe the specific mitigation for any identified impacts, including mitigation for impacts that are disproportionately high and adverse to minority populations and low-income populations.

NEPA AND EJ NATIONAL TRAINING PROJECT

Overview

The NEPA Committee seeks to improve the effective, efficient and consistent consideration of environmental justice issues in the NEPA process through the sharing of best practices, lessons learned, research, analysis, training, consultation, and other experiences of federal NEPA practitioners. To accomplish this purpose, the NEPA Committee produced a National Training Product (NTP) that serves as a companion to Promising Practices for EJ Methodologies in NEPA Reviews (Promising Practices).

Several measures were taken to develop the foundation for the NTP. First, exemplary trainings on environmental justice from across the federal family were identified and reviewed for best practices. Second, training material from multiple federal agencies on environmental justice and NEPA including guidance, protocol and related documents, were assessed for best practices. Third, examples of NEPA reviews that addressed environmental justice were collected. Finally, draft PowerPoints were produced, reviewed and revised over the course of 36 months in order to produce the final NTP.

In addition, the NTP is aligned with *Promising Practices*. This alignment does not imply a line-by-line interpretation but that the key elements are captured. It is recommended that *Promising Practices* be read before taking the training and kept close by for reference so that the full nature and context of the NTP can be better understood. *Promising Practices* guiding principles and specific steps are referenced throughout the NTP. However, the NTP also includes more details and provides additional options, methods and examples.

The NTP consists of a Master PowerPoint Presentation that can be used in whole or in part to increase understanding of the intersection between NEPA and environmental justice. The target audience is federal NEPA and environmental justice practitioners. The NTP uses a variety of approaches (e.g. mapping tools, examples, and videos) to help explain elements of an effective environmental justice analysis in the NEPA process.

OUTLINES OF NATIONAL TRAINING PRODUCT

Part One: Background on NEPA and environmental justice

- Learning Objectives
- Environmental j=Justice Defined
- Environmental Justice/NEPA Common Themes
- Core Principles of Environmental Justice

Part Two: Integration of Environmental Justice Analysis in the NEPA Process

I. Meaningful Engagement

- Outreach
- Other Options
- Public Participation

 Case Example [NY/N]/Philadelphia Metropolitan Airspace Redesign (FAA)]

II. Scoping Process

• Early Planning, Case Example [New Pueblo, Colorado Freeway (FHWA)]

III. Defining the Affected Environment

- Demographic Data
- Base Line Characteristics
- Unique Conditions

IV. Developing and Selecting Alternatives (Alternatives Analysis)

V. Identifying Minority Populations

- Guiding Principles
- Conduct Appropriate Analyses
- Test 1: The No-Threshold Analysis
- Test 2: Part 1- The 50% Criteria and Part 2 The Meaningfully Greater Test
- Determining Appropriate Benchmarks
- Comparative Magnitude vs Absolute Threshold
 Case Example [Moganza to the Gulf Feasibility Study, Storm and Hurricane Risk-Reduction System (ACoE)]

VI. Identifying Low-Income Populations

- Guiding Principles
- Alternative Criteria Analysis
 Lo -Income Threshold Criteria
- Case Example: Did They Do It Right an Interactive Scenario

VII. Impacts

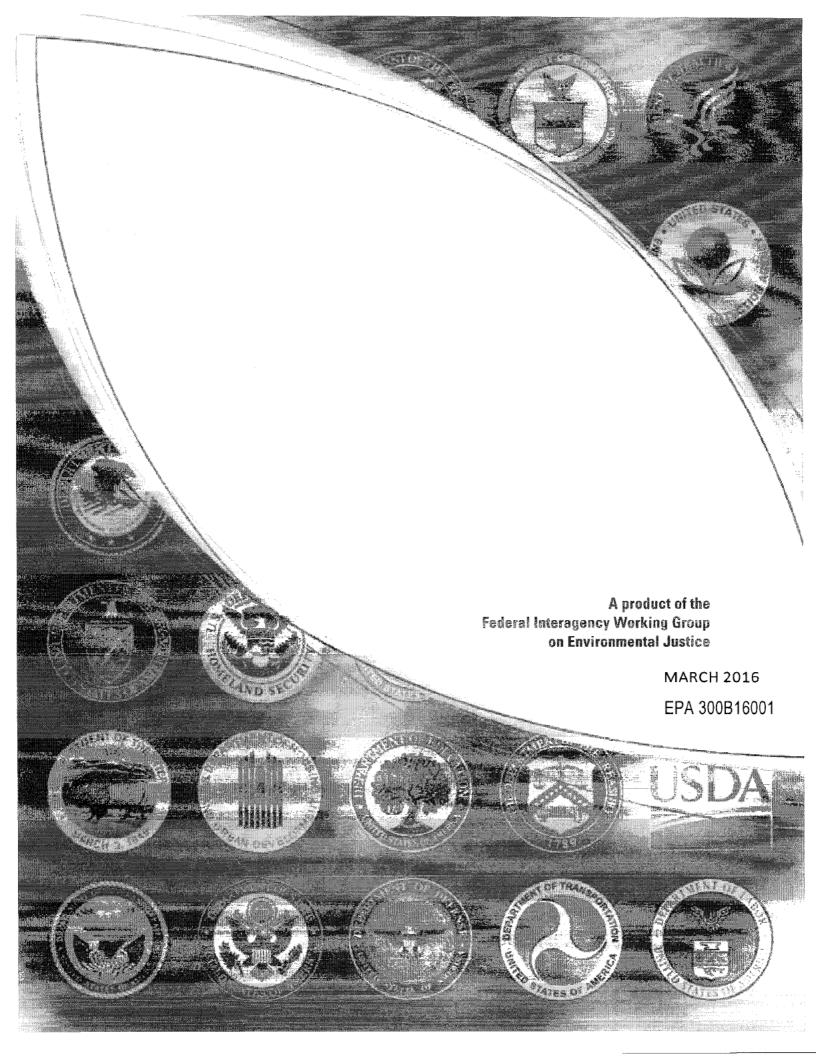
VIII. Disproportionately High and Adverse Impacts (DHAI)

- Disproportionate Impact Factors
- DHAI Determination
- Assessing Benefits and Burdens
 Case Example [Gasco Development Oil and Gas Development on BLM lands,
 Utah; Klamath River Facilities Removal, OR and CA]

IX. Mitigation and Monitoring

- Mitigation Methods

 Case Example [Central Corridor Light Rail Transit, Minneapolis-St. Paul, MN]
- Community Benefits Agreements
 Case Example Charleston Naval Base Expansion



Native American Affairs-related input for the DoD-wide annual report on EJ

In 1996, OSD developed the Native American Lands Environmental Mitigation Program (NALEMP) to address the effects of past military operations on Native American lands and ANCSA-conveyed properties. DoD-related impacts to tribal lands that NALEMP helps address include: hazardous materials; munitions debris; unsafe buildings or structures; lead-based paint and asbestos; and abandoned equipment. While most environmental cleanup programs use site evaluation and assessment processes that are consistent with national environmental regulatory requirements, they do not consider the potential effects that past military operations may have on traditional cultures, such as risks to subsistence activities or cultural practices. Therefore, some remnants of DoD activities, such as abandoned buildings and debris, typically rank lower or are not eligible for assistance under current cleanup priority systems. In addition, because many Indian lands and properties conveyed via the Alaska Native Claims Settlement Act of 1972 are located in remote areas with low population densities, effects on these lands are often considered lower priority sites. NALEMP provides DoD with a framework for assessing and mitigating the EJ effects associated with these sites.

The Office of the Secretary of Defense (OSD) received \$12 million from Congress in FY 2015 for NALEMP. Under NALEMP, DoD enters into Cooperative Agreements (CAs) with tribal governments. OSD oversight during the reporting period included monitoring progress on over 30 ongoing NALEMP Cooperative Agreements (CAs) with tribes. DoD uses consultation to develop the CAs with NALEMP partner tribes. Sixteen tribes benefitted from funding provided under NALEMP in FY 2015 to mitigate environmental contamination. To date, DoD has executed 279 CAs with 60 tribal nations at a total funding level of over \$122 million.

NALEMP has so far involved tribes from nearly a dozen states. DoD works with affected tribes on a government-to-government basis (via Cooperative Agreements) to determine how best to mitigate the environmental impact(s). Two examples of recent Cooperative Agreements and how funding under NALEMP is helping affected tribes include:

Native Village of Tazlina, Alaska

The purpose of the FY 2015 NALEMP Cooperative Agreement with the Native Village of Tazlina (AK) is to demolish a 300,000-gallon above ground fuel storage tank and remove and dispose of 11 acres of associated debris. The Native Village of Tazlina is a small community in south central Alaska. The materials to be removed were the result of U.S. Air Force and U.S. Army's use of the Gulkana Prepositioning Area and U.S. Amy Site from 1943 to 1970. It is important to the tribe that the land is restored because of the tradition of subsistence hunting in the area; the presence of debris limits their ability to continue and expand this practice. In addition, the debris poses a safety concern. The Native Village of Tazlina expects to complete the demolition and removal project by the end of 2017.

Pueblo of Santa Ana, New Mexico

The FY 2015 NALEMP Cooperative Agreement with the Pueblo of Santa Ana (NM) will provide the tribe with the resources to manage and coordinate efforts to develop a strategic plan for DoD-

related environmental projects. The strategic plan will provide a comprehensive picture of all known impacts on or affecting Santa Ana lands and will prioritize these sites. Tribal capacity to oversee environmental projects will be enhanced once selected tribal staff take part in a 40-hour training course on safe operation of mitigation projects at hazardous sites. Munitions debris scattered on 320 acres of tribal land are related to two former Precision Bombing Ranges for Kirtland Air Force Base will be addressed through the Cooperative Agreement. Cleanup of these areas is vital to the tribe because the land is used for subsistence food gathering and traditional and cultural purposes. The Pueblo of Santa Ana expects to complete work at these sites by the end of 2016.